

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

3 FOREST RIDGE HOMEOWNERS)
4 ASSOCIATION,)

5 Plaintiff,)

6 -vs-)

Case No. 1:17-CV-4193

7 GREATER NEW YORK MUTUAL)
8 INSURANCE COMPANY,)

9 Defendant.)
10 _____)

11 The deposition of THOMAS IRMITER, called
12 for examination pursuant to the Rules of Civil
13 Procedure for the United States District Courts
14 pertaining to the taking of depositions, taken before
15 Judith T. Lepore, Certified Shorthand Reporter for the
16 State of Illinois, at 222 North LaSalle Street,
17 suite 1400, Illinois, on May 17, 2018, at the hour of
18 10:00 a.m.

19
20
21
22
23 Judith Lepore, CSR

24 License No.: 084-004040



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INDEX

WITNESS	PAGE
THOMAS IRMITER	
Direct Exam by Mr. Fortin	4
Cross-Exam by Ms. Kaplan	240

EXHIBITS

EXHIBIT NUMBER	MARKED FOR ID
Irmiter Deposition	
Exhibit No. 245	5
Exhibit No. 246	5
Exhibit No. 247	46
Exhibit No. 248	49
Exhibit No. 249	65
Exhibit No. 250	69
Exhibit No. 251	92
Exhibit No. 252	109
Exhibit No. 253	116
Exhibit No. 254	207
Exhibit No. 255	214
Exhibit No. 256	214
Exhibit No. 257	219
Exhibit No. 258	227
Exhibit No. 259	232
Exhibit No. 260	232
Exhibit No. 262	235
Exhibit No. 261	237

(Exhibits retained by Mr. Fortin.)



1 (witness duly sworn.)

2 THOMAS IRMITER,

3 called as a witness herein, having been
4 first duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MR. FORTIN:

8 Q. Good morning, Mr. Irmiter.

9 A. Good morning.

10 Q. You know me. I know you. In this matter,
11 I'm representing Greater New York Mutual Insurance in
12 a lawsuit that's filed by the Forest Ridge Homeowners
13 Association, and you understand that you've been
14 disclosed as an expert by the plaintiff in this
15 matter?

16 A. Yes.

17 Q. You've given a couple depositions in your
18 life?

19 A. Yes.

20 Q. So I'll dispense with the ground rules and
21 formalities with the assumption that you're familiar
22 with the process.

23 A. That's fine.

24 Q. Just as a friendly reminder, we can take a



1 break any time today. I just ask that you answer any
2 question that's pending at the time.

3 I also ask that if I fail, despite my best
4 efforts, to ask a clear question, please let me know.

5 A. I will.

6 Q. Thank you.

7 (Whereupon, Exhibit No. 245 was
8 marked for identification.)

9 BY MR. FORTIN:

10 Q. I'm going to hand you Exhibit 245, which is
11 the CV that was produced to us with your expert -- or
12 I'm sorry, plaintiff's expert disclosures in this
13 matter. Do you recognize this?

14 A. Yes.

15 Q. And from a date towards the top of this first
16 page, it looks like this CV was effective of
17 January 16, 2018?

18 A. Yes.

19 Q. And when you came in today, you brought with
20 you an updated CV, correct?

21 A. Yes, I did.

22 (Whereupon, Exhibit No. 246 was
23 marked for identification.)
24



1 BY MR. FORTIN:

2 Q. I'm handing you Exhibit 246. Just let me
3 know that that is the updated CV you brought with you
4 today.

5 A. Yes, this is the one I brought today.

6 Q. And it's my understanding that the only
7 difference between what we've marked as Exhibit 246
8 and what we've marked as Exhibit 245 is that
9 Exhibit 246 has a more current list of depositions
10 and/or other testimony you've given recently; is that
11 correct?

12 A. Yes. There's one other -- I'm just looking
13 through. I'm noticing one other small change as well.
14 Under continuing education on page 12 of 18 of the
15 5/16/18 deposition, there are additional states on
16 there that I have been approved to teach classes for
17 the insurance industry.

18 Q. Okay. Thank you.

19 what's your current residence address?

20 A. 657 Lincoln Avenue, St. Paul, Minnesota.

21 Q. Is that also your business address?

22 A. Yes. We shut our -- we closed our brick and
23 mortar a year and a half ago and went virtual with
24 everybody. So that's our world headquarters now.



1 Q. When you say "we," just for clarity sake,
2 you're referring to Forensic Building Science,
3 Incorporated?

4 A. I am, yes.

5 Q. Is it okay if I refer to that as FBS today?

6 A. It will be easier, yes.

7 Q. All right. And I understand that you are the
8 owner of FBS?

9 A. Yes.

10 Q. Are you the sole shareholder?

11 A. While my wife may dispute this statement,
12 yes, I am.

13 Q. And FBS was incorporated in 2004?

14 A. It was, yes.

15 Q. And you've been the sole shareholder at all
16 times since then?

17 A. Yes.

18 Q. What, if anything, did you do to prepare for
19 your deposition today?

20 A. I spent about five hours yesterday. Went
21 through all of the photos that were taken by the
22 various participants from our team. Went through --
23 which I hadn't done before. I went through some
24 J.S. Held original field notes and original estimate.



1 went through original field notes from Horvath's group
2 and his report again, comparing field note data to the
3 actual published data in the report. went through a
4 weather report from Rocco Calaci. went through our
5 entire file that we submitted to you guys in terms of
6 the discovery request, including the supplemental
7 report that I issued. And then I read bits and pieces
8 of Mr. Nierengarten and Mr. Johnson's depositions.

9 Q. Does that exhaust the list of documents that
10 you reviewed yesterday in preparation for your
11 deposition?

12 A. Yes. And everything that was submitted in
13 the subpoena request, plus anything else I've
14 mentioned, yes.

15 Q. When you referred to photographs taken by
16 your people, that would include photographs that you
17 took during your site inspection, right?

18 A. Yes.

19 Q. That would include photographs that
20 Mr. Johnson and Mr. Steinke took while they were on
21 site?

22 A. Yes.

23 Q. It would include photographs taken by
24 Hannah York?



1 A. Yes. And in particular, what I do in
2 preparation for a deposition is, I have two screens, a
3 large screen and then a little smaller one, and I put
4 up at the same time two types of photos. And we have
5 produced all of these to you.

6 In the photo reports that you have, that is
7 the JPEG that has been downsized into a word document,
8 which is used for report purposes. For the purposes
9 of trial, we would use the raw JPEGs, and not
10 necessarily all 4,000 of them. We've all done enough
11 trials to know that after about 50 photos, the jury
12 gets pretty bored, so we have to pick out of there
13 what we consider to be potential for a while photos.

14 So what I was doing yesterday was taking --
15 which I had done in preparation with the report as
16 well is I'm taking those raw photos and I'm blowing
17 some of the closer ones that we took up, that we took
18 on site, that I took and that my people took under my
19 direction to show the fractures that are in the actual
20 mat from the hail. And there's great representation
21 of that in those photos. You wouldn't necessarily see
22 those in the word document itself. Okay.

23 Q. Did you also review photographs taken by
24 Mr. Nierengarten yesterday?



1 A. Yes.

2 Q. Is there anyone else that took photographs on
3 your side of the equation that you reviewed yesterday?

4 A. No.

5 Q. It's my understanding that those are all the
6 people on your side who took photos; is that correct?

7 A. To my knowledge, yes.

8 Q. And to your knowledge, though, you would know
9 if someone else had?

10 A. I would, yes.

11 Q. You mentioned that you reviewed bits and
12 pieces of Mr. Johnson's and Mr. Nierengarten's
13 transcripts?

14 A. Yes.

15 Q. How did you select those bits and pieces to
16 review?

17 A. I've reviewed hundreds and hundreds of
18 transcripts in my career. Basically I did a quick
19 read. I'm scanning through essentially.

20 Q. So you didn't selectively go to a page to
21 read that testimony and then skip over other pages;
22 you just did a quick scan through the whole
23 transcript?

24 A. Yes, nobody directed me. I'm a speed reader,



1 so I can read pretty quickly. So when I say I picked
2 through, I read every word of it. I didn't give it a
3 close read where I would have printed a copy,
4 underlined things, and put notes. Okay.

5 Q. Was there any testimony from Mr. Nierengarten
6 in his transcript that you disagreed with?

7 A. I've got to think about it.
8 Not that I recall.

9 Q. How about in Mr. Johnson's transcript?

10 A. There was one part in his -- in his, I think
11 it's page 82 and 83, and I actually called him on this
12 yesterday to discuss with him. I said, have you
13 signed your errata yet, and he said he hadn't. He
14 wasn't sure if there was still time to do that. I
15 said, you might want to, because on page 82, counsel
16 asked you a question. And the way the question was
17 asked, you skipped through it, and you eliminated
18 yourself with some potential testimony, which is not
19 exactly what I think you were trying to say. And so
20 he was going to look at that and address that issue.
21 But I thought that that was -- having worked with
22 Mr. Johnson for a number of years, that answer was out
23 of form at the bottom of 82 and at the top of 83.
24 whether it was your intention to trick him or not, it



1 looked like he was tricked.

2 There's also -- I guess I should go back. In
3 both Johnson's and Nierengarten's testimony, I don't
4 think they completely understood the sequence of how
5 the weather data was gathered by me personally, and
6 how Mr. -- how the meteorologist was brought into this
7 project under my recommendation based on my search of
8 weather data.

9 Q. And what meteorologist are you referring to?

10 A. Rocco.

11 Q. Did you review Hannah York's deposition
12 transcript?

13 A. I did not.

14 Q. Any particular reason why not?

15 A. Didn't have time.

16 Q. Have you reviewed any other deposition
17 transcripts that have been generated in the course of
18 this litigation?

19 A. No, not yet.

20 Q. Do you plan to?

21 A. Don't know.

22 Q. How, if at all, do the opinions you intend to
23 give in this matter differ than the opinions that
24 Mr. Nierengarten intends to give?



1 A. Well, Mr. Nierengarten was a scrivener. I
2 mean, his job was to essentially draft -- pre-draft
3 the report, do some preliminary weather data searches,
4 make sure that, for example, the right storm data is
5 at the top, the insurance policy numbers are correct,
6 the address is correct. He'll do a basic weather
7 search initially and put a couple things on the
8 server. All of those we've sent to you in discovery.
9 And we'll -- I will look at those and assist in
10 inserting those into the document. He will go ahead
11 through the logbooks, and he'll actually take the raw
12 data out of the logbooks and type that in. All of
13 that will be highlighted in yellow in a draft.

14 That will then come to me. The remaining
15 part of the report, causation statement, conclusions,
16 damages section will be from another report. So that
17 will all be read. So then I will go in, and I will
18 take the first stab in this case at the causation
19 report, the causation analysis, all of the conclusions
20 in the scope of repair.

21 Then we'll typically go back to Ryan, because
22 quite frankly what happens is, I screw them up, and I
23 get the numbers off. I don't know how to work those.
24 So he has to go back and reformat so it looks right.



1 He'll check it for spelling, and it will kick over to
2 Brian Johnson in this case. And then Brian will take
3 a look at it, and that will generate some discussions
4 between Brian and myself to get to a final work
5 product that we both feel comfortable signing.

6 So really that was Ryan's role. He signed it
7 simply because he had laid his fingers on it.

8 Q. How did Mr. Nierengarten share his initial
9 draft of the report with you? Does it go up on a
10 server; does he send you an email attaching it?

11 A. It goes up on the server, yeah. I get a
12 text, get a call. It might come up in a weekly staff
13 meeting, hey, Tom, these reports are coming. For
14 example, when I get back tomorrow, I know that there
15 will be three reports ready for me to start looking at
16 that we have projects that we've looked at the last
17 couple of weeks.

18 Q. And then after you do your part and either
19 send it back to Mr. -- or let me rephrase that. After
20 you did your part and make it available to
21 Mr. Nierengarten again or Mr. Johnson, do you do that
22 again by just putting it up on a server?

23 A. Yes.

24 Q. Did you email any drafts of your report to



1 Mr. Nierengarten or Mr. Johnson?

2 A. I wouldn't have, no.

3 Q. Did either of them email any drafts or
4 revisions to the report to you?

5 A. I would imagine they did, yeah. Because with
6 Brian working as a co-author and not working in our
7 facility any more, now as a subconsultant, he would
8 have had to have gotten a draft of that, yeah, at some
9 point.

10 Q. You used the phrase I think "logbook" earlier
11 when you described the drafting process.

12 A. Yes.

13 Q. What is that?

14 A. These are our field notes. Some of our
15 people -- I think Hannah, for example, we produced her
16 field notes. She did -- I think she does her on a
17 yellow legal pad. I do mine in an old-fashioned
18 logbook. So when you look at the documents that we
19 sent to you that say, Tom's notes, I've taken that
20 logbook, opened it, and copied those onto the server.

21 MR. FORTIN: I don't have those.

22 MS. KAPLAN: I've produced everything that
23 was turned over.

24 THE WITNESS: I looked at document production



1 again yesterday when I was prepping, and all the notes
2 are in there.

3 MR. FORTIN: Go off the record for a moment.

4 (Whereupon, a discussion

5 was had off the record.)

6 BY MR. FORTIN:

7 Q. You're aware that Mr. Nierengarten was
8 disclosed by the plaintiff as a retained expert in
9 this matter, correct?

10 A. No, I don't read the -- read those documents.
11 I know that I was, but I don't know who else was.

12 Q. You're aware that he gave a deposition
13 because you read his transcript, right?

14 A. I did, yes.

15 Q. And you saw in his transcript where he
16 offered or expressed his intent to offer certain
17 expert opinions, right?

18 A. Absolutely. He's certainly qualified to do
19 that.

20 Q. Do you intend to offer the same expert
21 opinions that he does? Understanding that you may
22 have additional opinions, is there at least some
23 overlap between the opinions you intend to provide and
24 the ones that he intends to provide?



1 A. Yes, I think there would be.

2 Q. Is there any difference other than the fact
3 that you have opinions based on the estimate and the
4 supplemental report, or do the differences between the
5 opinions you intend to express and that he intends to
6 express differ in any other way?

7 MS. KAPLAN: I'm just going to object to the
8 extent it may call for a legal conclusion. If you're
9 asking about, you know, factual differences between
10 the opinions offered, my objection is not to that part
11 of the question.

12 THE WITNESS: I'll answer the question by
13 saying, how could I know until you ask the questions.
14 There's no way I could know that, Counselor, until you
15 pose the question to Mr. Nierengarten on one side of
16 the table and the same question to me on the other
17 side of the table.

18 I will tell you generally, based on having
19 worked with him, he's my oldest senior employee, that
20 I would anticipate that at the end of the day, the
21 substance of the answers would be very similar. We
22 may get there a little bit differently based on our
23 training, education, and experience, mine being much
24 more than his.



1 BY MR. FORTIN:

2 Q. The same question with respect to
3 Mr. Johnson's opinions, you saw that he expressed
4 expert opinions in his transcript, right?

5 A. Yes.

6 Q. Do you intend to offer some of the same
7 expert opinions that he intends to?

8 A. If I'm asked, yes.

9 MS. KAPLAN: Same objection for the record.

10 MR. FORTIN: Noted.

11 BY MR. FORTIN:

12 Q. Are you aware of any way in which your
13 opinions differ from the ones that Mr. Johnson
14 expressed in his deposition?

15 A. Not substantively, no.

16 Q. How about not substantively?

17 A. I said not substantively.

18 Q. Right. So does that mean that --

19 A. It means what it says. No other meaning.

20 Q. Does that mean that your opinions differ from
21 Mr. Johnson's in some non-substantive way?

22 A. Mr. Johnson may identify a photo as being
23 hail damage. Mr. Johnson may not go to the depth of
24 blowing the photo up and actually showing the



1 fracture, which I would do. It may be the same
2 identical photo. So he may identify it as being a
3 hail strike that has caused granule loss. I may
4 identify the exact same one through that process as
5 actually having a fracture in the mat by showing the
6 jury that fracture.

7 So typically what we would find is that my
8 ability to explain what the jury is looking at will be
9 more in depth than Mr. Johnson's just based on my
10 training, education, and experience. I will have a
11 better handle on building codes than Mr. Johnson
12 because I'm a Building Code official. And certainly
13 with regard to the scope of repair and with the damage
14 numbers that I put together, I would certainly have
15 more experience doing that than him since I put
16 estimates together for the last 40 years. He hasn't.

17 Lastly, I have installed all of the products
18 that are talked about on this project. I've installed
19 siding, vinyl siding. I've taken it off. I've
20 attempted to put it back on. I can discuss in detail
21 the problems of removing the siding, not for a single
22 inspection where you zip it open, but to physically
23 remove large sections of siding and what percentage
24 that siding becomes physically damaged to the point



1 that you can't reinstall it based on having physically
2 done that and based on watching that done on
3 large-scale projects. I've installed thousands of
4 bundles of three-tab shingles. Mr. Johnson hasn't. I
5 installed ice and water shield. I've installed
6 valleys.

7 So again, I bring that experience to the
8 table. So yes, obviously I would answer the question
9 a little bit different than him. He may say it can't
10 be done. I'm going to tell you why it can't be done.

11 Q. What's the highest level of formal education
12 you've attained?

13 A. I have four credits towards my master's
14 degree in engineering from the University of
15 Wisconsin.

16 Q. So what's the last degree that you obtained?

17 A. Undergraduate degree in Bachelor of Arts.

18 Q. What was your major?

19 A. English.

20 Q. Ever been employed as an insurance adjuster?

21 A. No.

22 Q. Ever been employed by an insurance company?

23 A. Well, I've been retained by insurance
24 companies.



1 Q. Have you ever been an employee of an
2 insurance company?

3 A. No, I never have. No.

4 Q. Do you have any formal education in the field
5 of meteorology?

6 A. Yes.

7 Q. Can you describe that education for me?

8 A. I have eight hours of training from NOAA as a
9 trained weather spotter. And in that training, that I
10 took, we specifically spent two hours on how to access
11 NOAA weather data online, how to interpret NOAA
12 reports, SWDI reports, the mesocyclone reports for
13 wind, those kinds of things, to be able to arrive at
14 determining if, in fact, the site that we might be
15 visiting had a storm event that was at least
16 identified by NOAA.

17 We also covered, as a weather spotter, how to
18 measure for hail, how to report hail size in terms of
19 how long it's been on the ground, what the temperature
20 is outside, how much section loss that will have
21 because it's melted down. So that piece of hail that
22 I pick up that's one inch that has been on the ground
23 for 15 minutes and it's 80 degrees outside wasn't one
24 inch when it hit. It was bigger than that.



1 we also cover debris pattern. We cover
2 identification of cloud formations and weather
3 patterns. We also cover after-the-fact wind damage
4 and different wind speeds that cause different things
5 to happen, like shingles to blow off, siding to blow
6 off, tree branches to break, those kinds of things.

7 MS. KAPLAN: Could I show him what I got and
8 make sure --

9 MR. FORTIN: Sure. Let's go off the record.

10 (Whereupon, a discussion
11 was had off the record.)

12 THE WITNESS: In addition, I have sat through
13 eight hours of continuing education taught by two
14 different meteorologists.

15 BY MR. FORTIN:

16 Q. So first, you have an eight-hour NOAA course
17 for your spotter training?

18 A. Yes.

19 Q. And then you say you have another eight hours
20 from what exactly?

21 A. From three different -- two meteorologists
22 and one engineer/meteorologist. And these were at
23 training seminars, I guess, is best way to say it.

24 Q. Other than those 16 hours, do you have any



1 more qualifications in the field of meteorology?

2 A. No.

3 Q. Ever been employed as a meteorologist?

4 A. No.

5 Q. Do you hold yourself out as an expert in the
6 field of forensic meteorology?

7 A. No.

8 Q. A few moments ago you mentioned your
9 experience actually installing, repairing, or
10 replacing siding and shingles and whatnot. Do you
11 recall that?

12 A. Yes, I do.

13 Q. Do you still do that work in a professional
14 capacity?

15 A. No.

16 Q. When did you stop doing that sort of work in
17 a professional capacity?

18 A. Let's see. Probably 16 years ago, 2002.

19 Q. And when you stopped doing that work in a
20 professional capacity, did you shift into what you
21 might call consulting?

22 A. I was consulting -- I did my first consulting
23 gig 40 years ago when I did my first trial. I've been
24 consulting my whole life.



1 Q. when you stopped doing actual repair,
2 replacement, installation, what took up that time that
3 was formerly taken by that?

4 A. This business that we have today.

5 Q. The eight hours of spotter training you
6 received from NOAA, was that towards your Metro
7 Skywarn Spotter Certification?

8 A. Yes.

9 Q. What entity certified you as a vinyl siding
10 installer?

11 A. Vinyl Siding Institute.

12 Q. If you turn to page 6 of Exhibit 245.

13 MS. KAPLAN: 245 or 246?

14 MR. FORTIN: 245 just because that's what I
15 have my notes on.

16 THE WITNESS: Page 5, you said?

17 BY MR. FORTIN:

18 Q. Page 6. At the bottom there's a heading that
19 says "Construction Consulting Experience?"

20 A. Yes.

21 Q. It says, "Destructive inspections on over
22 2,500 residential properties?"

23 A. Yes.

24 Q. Would those 2,500 destructive inspections



1 span 1985 all the way through the present or would
2 they be concentrated or have a cutoff at any point in
3 between?

4 A. No. They would span from 1985 to the
5 present. In the process of the construction company
6 that I owned, as a design-build firm when we went
7 through what we called a Phase 1 design development
8 phase to arrive at a scope, a preliminary plan, if you
9 will, if you are our client, and a preliminary budget,
10 if that was approved, the preliminary budget, then we
11 would do a destructive inspection on every project
12 that we did so that we could avoid change orders. So
13 we would dig into walls, ceilings, floors to find out
14 if there were pipes.

15 So if I'm going to knock this wall out behind
16 you and there's a bunch of pipes in there, most
17 contractors would deal with that and say, well, we'll
18 just give you a change order. We found all of that
19 out ahead of time. So that was the basis for a lot of
20 the inspection work we do today.

21 Q. From 1985 to the present, did you also do
22 destructive inspections on commercial properties?

23 A. Yes.

24 Q. Any rough estimate as to how many?



1 A. Well, both of these numbers should be
2 updated, quite frankly, on this part of the CV. I
3 would imagine, as I sit here today, residential
4 inspections is well over 7,500, commercial inspections
5 is probably over 15,000.

6 Q. And is that -- when you say "inspection"
7 there, are you including both destructive and
8 nondestructive?

9 A. Yes.

10 Q. So 7,500 residential, did you say?

11 A. Yes.

12 Q. And 15,000 commercial?

13 A. Yes. Total.

14 Q. And would those be inspections that you
15 personally participated in or your company or
16 companies?

17 A. Personally.

18 Q. If you turn the page, "Guest Lecturer."
19 There is a 54th Annual IBC Officials Meeting listed
20 there?

21 A. Yes.

22 Q. What subject did you lecture on?

23 A. I gave a presentation on the duties and
24 responsibilities of Building Code officials when



1 interpreting what is called the Existing Building
2 Code. And the topic was "Just Say No."

3 Building Code officials like to -- because a
4 lot of them come from the trades, they're problem
5 solvers. So they like when you walk in -- or you
6 bring them to the site and you say, can I do this? A
7 lot of times, oh, yeah, you could do this or you could
8 do this. That's really not what they're supposed to
9 do. A Building Code official is supposed to approve
10 and deny plans.

11 So what that taught this room of 2,000
12 Building Code officials -- and I still hear from them
13 today about how wonderful that was -- is now they
14 basically know that when somebody comes in, they say,
15 bring me a plan that I can approve or deny because
16 that's my job.

17 **Q. What does IFMA stand for?**

18 A. International Facilities Management
19 Association.

20 **Q. I'm sorry?**

21 A. International Facilities Management
22 Association. These are people who manage buildings
23 like the one we're sitting in today, and this was a
24 discussion on insurance policies, coverage issues, and



1 damages that result from storms.

2 Q. NAPIA, that's the National Association of
3 Public Insurance Adjusters?

4 A. Yes.

5 Q. What topic did you present on there at their
6 midyear meeting in 2017?

7 A. I think that's later on in here. Let's see
8 what it says in here.

9 That particular one was on fire loss.

10 Q. And what's the acronym GAPIA stand for?

11 A. Georgia Association of Public Insurance
12 Adjusters. That was a wind and hail talk and a second
13 talk on fires.

14 Q. At their Fall Educational Conference of 2016?

15 A. Yes, that was one of the -- when you go later
16 in the CV, I mention the various states that have
17 approved me for continuing education credits. When I
18 do these talks, I have to apply to the states to be
19 approved so that the people attending, both adjusters,
20 public adjusters, can get their continuing education
21 credits.

22 Q. And when you give a presentation or lecture
23 for continuing education credits for adjusters or any
24 other professional, do you retain your presentation



1 materials?

2 A. PowerPoints, yes.

3 Q. How far back do you keep those?

4 A. I don't think I have the 54th annual one
5 still. I might. I don't think I have the IFMA. I
6 probably have the 2016, 2017 ones, yeah.

7 Q. A few headings down, there's a bullet point
8 that says you received a designation as an RBI?

9 A. Yes.

10 Q. Can you tell me what that stands for?

11 A. Residential Building Inspector.

12 Q. Who bestowed that designation on you?

13 A. International Code Council. That was
14 actually a test that had to be taken. It wasn't an
15 honorary appointment.

16 Q. Are you familiar with the Xactimate
17 estimating software?

18 A. Absolutely.

19 Q. Do you have any certifications related to
20 Xactimate?

21 A. My start with Xactimate was in the mid-'80s.
22 I have a nice cap that I have as a memory of that time
23 called "Xactimate for Remodelers." I was one of six
24 companies that worked with them to begin the process



1 of setting up some of the unit of pricing that they
2 use today. We had over 40 years of records from our
3 construction company. So I started working with
4 Xactimate from day one. I haven't had formal training
5 with them because I was there when the product was
6 developed.

7 Q. You prepared an Xactimate estimate in this
8 Forest Ridge matter, right?

9 A. Yes.

10 Q. Do you know what version of the Xactimate
11 software was used to generate that estimate?

12 A. The 8X, and I'd have to look at the heading
13 to tell you what month we ran.

14 Q. But the software version was 8X, you said?

15 A. Yes.

16 Q. And when you refer to looking at the heading
17 to see what month you ran, are you referring to the
18 price list?

19 A. Yes. Whether it was 2015, 2016, 2017 or what
20 it was.

21 Q. If you'll turn to page 10. At the top of
22 that page, it looks like those bullet points are
23 listing presentations that you attended at the 2017
24 First Party Claims Conference. Is that accurate?



1 A. Yes.

2 Q. Do you still have the materials, if any,
3 disseminated during those presentations?

4 A. Probably not. But I think actually NAPIA has
5 those online, so you can probably just click on them
6 and find them. Nothing's trying to be hidden, you
7 know.

8 Yeah, the gentleman that I talked about,
9 Matt Phelps, is the one who is actually becoming a
10 meteorologist, another credit to his name. And he's
11 the one that gave one of the talks on the engineering
12 and meteorology and combining those two processes.

13 Q. If you turn to page 12, there's a heading
14 "Testimonies, Depositions, and Appraisals?"

15 A. Yes.

16 Q. And the first heading under that is
17 "Testimony at District Court Trials."

18 A. Yes.

19 Q. Ten cases listed.

20 MS. KAPLAN: would it be -- and I'm sorry to
21 interrupt you. would it make sense to refer to the
22 new version of the CV since this is the one of the
23 sections that was updated?

24 MR. FORTIN: I'm about to do that.



1 BY MR. FORTIN:

2 Q. Mr. Irmiter, you can also turn to page 12 of
3 what we marked as Exhibit 246, which is your more
4 current CV.

5 A. Yes.

6 Q. And looks like under that heading "Testimony
7 in District Court Trials," there's also 10 cases
8 listed, but they appear to be different in some
9 respect. Is that correct?

10 A. Yes. This is a document that is put together
11 for federal court purposes, so we cull out every four
12 years. I would not represent that these are the only
13 10 trials that I have done in my career. There are
14 many, many more.

15 Q. So on Exhibit 246, those 10 cases are just
16 the last -- or I'm sorry. Those are just the trials
17 you've testified at in the four years prior to the
18 effective date of this CV?

19 A. Yes.

20 Q. And so any differences between that list and
21 the same list on Exhibit 245 would be due to a case
22 being older than four years or a new case, right?

23 A. Correct.

24 Q. And this encompasses both state and federal



1 court, right?

2 A. Yes.

3 Q. And those have all been state court cases?

4 A. Yes. There are federal court cases, but I
5 haven't had one in over four years.

6 Q. The next heading is after "Testimony At
7 Federal Court Trials" on page 13, it says, "First
8 Party Appraisals and Expert Testimony?"

9 A. Yes.

10 Q. And there are 113 matters listed there?

11 A. Which document?

12 Q. Looking at 246.

13 A. Yes, there are.

14 Q. Does this list of 113 matters include expert
15 testimony where you were disclosed as an expert for
16 purposes of litigation as opposed to for an appraisal
17 proceeding?

18 A. It depends on the state. I'll answer it this
19 way: I know that there may be overlap on some Texas
20 appraisals where we did the initial engineering workup
21 on it, if you will, and report. And once we had
22 completed that assignment, it went into appraisal
23 rather than litigation, and I was then asked to serve
24 as the appraiser.



1 I will tell you that typically in those
2 cases, the other appraiser was the original insurance
3 adjuster for the insurance company in most all of
4 those cases. So that is an interesting little tidbit
5 in Texas that happens.

6 But typically what this would be is either an
7 assignment as an appraiser, an assignment as an umpire
8 or instances where, independent of either one of
9 those, I was brought in to testify as an expert at an
10 appraisal when I was not on the panel.

11 Minnesota has gone through a -- in
12 particular, Minnesota has gone through a process of
13 formalizing the appraisals to the point where they
14 become mini trials, quite frankly. And so lots of
15 times experts are now being brought in for a day of
16 testimony in front of a panel, and I have done that a
17 number of times. We've done a couple of those like
18 that in Chicago as well.

19 Q. Does this list of 113 matters just span the
20 last four years?

21 A. Yes. Because if you look at the other
22 document, there's 156 items on there. There's only
23 113 on here. So we've culled a bunch out.

24 Q. So on Exhibit 246 here, the more current one,



1 I'm scanning through this list of 113, and am I
2 correct that there were no instances among these 113
3 where you were the appraiser for a defendant?

4 A. Just a second.

5 Q. And just to be clear by that, I mean no
6 instances where you were the appraiser for the
7 insurance company.

8 A. There is one -- it depends on which document
9 you're looking at. This is one on here where I was
10 named to be the appraiser for North Star Insurance. I
11 don't know where that one is.

12 MS. KAPLAN: I think is it this page 14 at
13 the top, number 50? Or wait, no.

14 THE WITNESS: No, that's North Star.

15 BY MR. FORTIN:

16 Q. If you look at the older CV, No. 34 is North
17 Star versus Anderson?

18 A. Yes.

19 Q. And that identifies you as appraiser for
20 defendant insurance company?

21 A. Yes. And what happened there is North Star
22 went to court to have an umpire assigned. My name was
23 on the umpire list from the other appraiser, and the
24 court said that North Star had not assigned an



1 appraiser yet and needed to do that. So the judge
2 appointed me as their appraiser. The appraisal didn't
3 happen. They settled the next day.

4 Q. And so that would be the only time in the
5 last four years where you served as an appraiser for
6 an insurance company?

7 A. Yes. They for some reason just don't like
8 me. I don't know why that is.

9 Q. Do you recall when the last time was that you
10 served as an appraiser for an insurance company prior
11 to that North Star matter?

12 A. No, I don't. I did my first appraisal
13 20 years ago, but I can't -- they were much different
14 back then.

15 Q. Other than that North Star versus Anderson
16 matter, have you ever been named as an appraiser by an
17 insurance company?

18 A. Yes. I just don't recall. It's been
19 10 years. I mean, it's been a long time.

20 Q. And I see, among this 113 listed in
21 Exhibit 246, a handful that appear to be in Illinois?

22 A. Yes.

23 Q. Do you recall whether any of those appraisals
24 concerned a property located in Streamwood, Illinois?



1 A. No, they did not.

2 Q. Do you recall whether any of those appraisals
3 concerned damage caused by a storm that occurred on
4 August 2 of 2015?

5 A. I believe two of them did.

6 Q. Can you tell me which two?

7 A. Just a second.

8 No. 104, I believe, Runaway Bay; No. 74, the
9 willows of Vernon Hills.

10 Appraisals are done under a separate entity.
11 They're not done under Forensic Building Science.

12 Q. What entity are they done under?

13 A. Lindsay, L-i-n-d-s-a-y, Consulting Group.
14 It's a separate LLC.

15 Q. Are you the sole member?

16 A. No.

17 Q. Who's the other member?

18 A. My wife.

19 Q. Other than the willows of Vernon Hills and
20 Runaway Bay, did any of the other Illinois matters
21 included in this list of 113 involve alleged hail or
22 wind damage?

23 A. They all did. There might be one fire in
24 there, but I think they're all wind and hail.



1 Q. If we look at No. 75 from Deer Run
2 Condominium.

3 A. Yes.

4 Q. Do you recall what storm that insurance claim
5 revolved around?

6 A. No.

7 Q. How about No. 76?

8 A. No. When I say "no," I know it wasn't the
9 same date as this.

10 Q. Do you recall what date it was?

11 A. No.

12 Q. And would that be true of any of the other
13 Illinois matters on this list?

14 A. Correct.

15 Q. Have you ever served as an appraiser in an
16 appraisal against Greater New York Mutual Insurance
17 Company?

18 A. I'll answer it this way: I don't keep track
19 of the carriers. I don't really care. So I
20 oftentimes don't know who they are. So I don't
21 recall. I don't really recall that at all.

22 Q. Is it fair to say, as you sit here today, you
23 do not specifically recall serving as an appraiser in
24 any appraisal against GNY?



1 A. I do not.

2 If you'd said Philadelphia, I could have
3 probably named about six or seven on the Illinois list
4 from there.

5 Q. The next heading, which starts on page 15,
6 and we're continuing ahead with the most current CV
7 here.

8 A. Yes.

9 Q. "Depositions and/or Affidavits Filed in
10 Courts." And this would, again, just be the last four
11 years?

12 A. Yes.

13 Q. Are there any among the 64 cases listed here
14 where you were retained by or testified for the
15 defendant and/or insurance company?

16 Actually, let me clarify that question. I'm
17 asking only now as to an insurance company.

18 A. Is this trials as well, because some of my
19 trials are...

20 Q. I don't know. Does this list --

21 A. These are just depositions and affidavits.
22 If you go back to the 10 trials, some of those are for
23 the defense side of this. All right?

24 Q. Okay. We'll go back to those in a minute



1 then. Let's stick with this list of 64.

2 MS. KAPLAN: I'm sorry. The question is, on
3 this list, was he retained by any insurance company
4 for these matters?

5 MR. FORTIN: Yes. Any of these 64 was he
6 retained by an insurance company.

7 THE WITNESS: Thank you.

8 No, none of those went to depositions or
9 affidavits. So no, these are all plaintiff.

10 BY MR. FORTIN:

11 Q. You mentioned that the list of trials at the
12 beginning of this Testimony's, Depositions, and
13 Appraisals section of your CV does include matters
14 where you testified on behalf of the insurance
15 company?

16 A. Yes.

17 Q. Can you point those out to me?

18 A. No. 4, Park Monaco was for the general
19 contractor. David and Marjorie Anderson, No. 7, was
20 for the general contractor. That's it.

21 Q. So in those matters, you testified for the
22 defendant, right?

23 A. Correct. Yes.

24 Q. But in those instances, the defendant was a



1 general contractor, not insurance company, correct?

2 A. But the insurance company -- I mean, I'm
3 sitting in the room with insurance company counsel.
4 They're paying my bill. So I'm retained to represent
5 that general contractor by the insurance company, yes,
6 and testify, so...

7 Q. And that would be a liability insurance
8 carrier for the general contractor, right?

9 A. Yes.

10 Q. Back to that list of 64 cases.

11 A. Yes.

12 Q. Any of those matters that were litigated in
13 Illinois, did any of them concern a property located
14 in Streamwood?

15 A. Yes.

16 Q. Which ones?

17 A. Southgate, No. 16.

18 Q. Any others?

19 A. No.

20 Q. Did any of the other Illinois cases among the
21 64 concern an August 2, 2015, storm?

22 A. No, just Southgate.

23 Q. Did any of the other cases among these 64
24 concern an April 2010 storm?



1 A. I'm sorry. Let me back up. Southgate was an
2 April 2010 storm. Southgate did not have a storm date
3 of 2016.

4 Q. You mean 2015?

5 A. 2015. I think it was already settled by
6 then.

7 Q. So just --

8 A. It may have had a storm date. I just don't
9 know.

10 Q. Just so I'm clear, this list of 64, the
11 Illinois case on there, none of them concern the
12 August 2, 2015, storm then?

13 A. Not that I'm aware of.

14 Q. And one of them, Southgate, concerned an
15 April 2010 event?

16 A. Yes. Per your request of information with
17 regard to that storm date and Illinois projects, our
18 data search did not turn up any works that Forensic
19 Building Science had done on that storm date of 2015
20 in Illinois.

21 Q. Other than this Forest Ridge matter and
22 Southgate matter, have you, either through Lindsay
23 Consulting Group or FBS, been involved in any
24 insurance claims regarding property located in



1 Streamwood, Illinois?

2 A. No.

3 Q. Given that it's on this list of 64, I take it
4 that you were deposed as an expert in Southgate?

5 A. Well, yes, Counsel, you know I was. It's
6 your former firm. You were there at the time, I
7 think.

8 Q. No, I left right after we filed the
9 complaint.

10 A. Oh, you did. Okay.

11 MS. KAPLAN: I thought you wrote the
12 complaint.

13 MR. FORTIN: I did. Let's go off the record
14 for a minute.

15 (Whereupon, a discussion
16 was had off the record.)

17 BY MR. FORTIN:

18 Q. In Southgate, you gave a deposition?

19 A. Yes.

20 Q. Did you also produce an expert report?

21 A. Yes.

22 Q. Did you prepare any rebuttal reports?

23 A. I don't recall.

24 Q. Did the case go to trial?



1 A. It did not.

2 Q. Do you recall what your opinion or opinions
3 were in that Southgate matter?

4 A. Yes.

5 Q. Did you have an opinion as to the extent, if
6 any, of damage to the Southgate Town Home Association
7 caused by hail from an April 2010 storm?

8 A. I did.

9 Q. And can you tell me, insofar as you're able,
10 what that opinion was?

11 A. Significant siding damage, multiple sides,
12 and roof damage requiring the roof to be replaced and
13 siding to be replaced. I mean, in comparison to this
14 particular case that we're talking about today, there
15 was significantly more siding damage.

16 Q. And at Southgate did they have vinyl siding
17 or aluminium siding?

18 A. They had vinyl siding. And the hits were
19 large in general, the ones that we were finding. They
20 had metal turtle vents as well. So unlike this site
21 that doesn't have any -- it has a ridge vent, so you
22 don't have any soft metals really to look at, there
23 were more to look at there and more things to see in
24 terms of the damage. Bigger storm.



1 Q. The hail damage that you observed at
2 Southgate, can you tell me approximately what size
3 hail that damage was consistent with?

4 A. I think we saw -- I saw when I was there size
5 two inch hail signature patterns. And understand
6 that -- and this is how we explain this to a jury,
7 hopefully there's people old enough on the jury to
8 remember the show "Captain Kangaroo," when all of the
9 ping pong balls would be dropped by Mr. Moose on top
10 of Captain Kangaroo at the beginning of each show.
11 Hail isn't all one size. It falls in a variety of
12 sizes in a storm. There are outliers that are larger.
13 There are outliers that are smaller. And there's
14 different degrees of hardness of the hail as well.

15 But in that particular case, there were
16 signature patterns of large hail, yeah.

17 MS. KAPLAN: Can we take a quick five-minute
18 break?

19 MR. FORTIN: Sure.

20 (Whereupon, a short break
21 was taken, after which the
22 following proceedings were
23 had:)
24



(Whereupon, Exhibit No. 247 was
marked for identification.)

BY MR. FORTIN:

Q. Mr. Irmiter, I'm handing you what I've marked
as Exhibit 247, which is on an old CV of yours that I
found floating around on the internet.

A. Okay.

Q. Does this document look familiar to you as to
the content and format of your curriculum vitae?

A. Yes. Does not look like it is a false copy,
if that's what you're asking.

Q. That is exactly what I'm asking. Thank you.
And if you look at the very last page, at the
end of that page, it says, "updated August 31, 2006."

A. Yes. That is old.

Q. There's a Bates stamp on these pages with the
abbreviation MOR.

A. Yes.

Q. Does that ring a bell to you at all?

A. Yes.

Q. Do you recall what case that was?

A. Circa 2006. Could be Morrison.

Q. Do you expect that there's any reference to
wind or hail in this CV that we marked as Exhibit 247?



1 A. Well, sure. Right under the bullet points
2 that you have on the very first page, it says,
3 "Evaluation of first party homeowner insurance
4 policies, first party loss claim inspections for
5 homeowners, insurance appraisals."

6 Q. I'm just specifically referring to the words
7 "hail" or "wind."

8 A. I don't know if that says that or not in
9 here.

10 Q. Would it surprise you if it did not contain
11 those words?

12 A. No, not at all.

13 Q. As of this point in time, 2006, was hail and
14 wind damage as big a part of FBS's business as it is
15 today?

16 A. No, no. It wasn't at all. The first hail
17 case I worked on was when I was 13 years old, and --
18 because we had a business that did roofing, so I was
19 on hundreds and hundreds of roofs that had been
20 damaged by wind and hail back then. That was how my
21 father got roofing work from insurance companies back
22 in the '60s and '70s.

23 The emphasis of Forensic Building Science in
24 2006, when this was done, was more focused on the ever



1 growing construction defect field that was going on,
2 water intrusion, EIFS, mold.

3 Q. When did hail damage start to become a more
4 common field of endeavor for FBS?

5 A. 2007.

6 MS. KAPLAN: Are you putting wind in that as
7 well or just hail?

8 BY MR. FORTIN:

9 Q. Were you including wind in your answer or
10 just hail?

11 A. Yes, wind, hail. We'd done pipe burst, we'd
12 done collapse, we'd done weight of ice and snow for
13 those kinds of claims before. Wind and hail really
14 starting to come into play in '07.

15 Q. If you turn to page 12 of Exhibit 247.

16 A. Yes.

17 Q. About halfway down the page, it introduces a
18 list, which is described as a partial list of
19 construction defects, water intrusion, and contract
20 dispute cases?

21 A. Yes.

22 Q. And these were all matters where you were
23 retained as an expert since January of 2002?

24 A. Yes.



1 Q. In any of these cases on this list, would you
2 have been retained by an insurance company, and I'll
3 specify by property insurance company, any first party
4 property insurance dispute?

5 A. There were some cases where we worked with a
6 gentleman, an attorney named Mark Peschel, and he
7 represented builders. And I can't tell you today
8 looking at this list which one of these, but there
9 were cases in that time frame when I was going to site
10 inspections, all-party inspections where stucco and
11 EIFS and things were being removed, window spray
12 testing was being done, and I was representing a
13 defendant. Whether that was a general contractor, a
14 framer, the EIFS installer, the window installer, I
15 can't tell you, but there were cases. And it was
16 probably a mix of about 40 percent on that side of the
17 fence, and 60 percent on the plaintiff side back then.
18 I don't remember testifying in any cases for the
19 defendants.

20 (Whereupon, Exhibit No. 248 was
21 marked for identification.)

22 BY MR. FORTIN:

23 Q. I'm handing you exhibit Exhibit 248. Let me
24 know if you recognize that as FBS's website.



1 A. Yes, it appears to be.

2 Q. Are you, for lack of a better term,
3 responsible for the substantive content of FBS's
4 website?

5 A. Well, as owner of the company, the buck stops
6 here. We have an outside source to put this together.
7 I contributed ideas, photos. If you go to the
8 website, you'll see that it says -- if you hit case
9 studies, for example, at the top on page 1, that icon,
10 it will say, "under construction." So we never really
11 completed it.

12 We're on the internet so that people know, I
13 guess, that we have a company. It's not a generating
14 source of business for us, quite frankly. It's not
15 where we get our business from.

16 Q. If you'll turn to -- the page numbers aren't
17 helpful, because they're not consecutive, but there
18 are short profiles of you and your employees.

19 A. Yes.

20 Q. If you'll turn to the one for Kevin Steinke.

21 A. Yes.

22 Q. It says that Mr. Steinke spent one year as an
23 independent insurance adjuster prior to joining FBS?

24 A. Yes.



1 Q. Do you know what insurance adjusting firm he
2 was a part of?

3 A. State Farm. He was a CAT adjuster.

4 Q. Do you know where?

5 A. CAT assignments. In Minnesota, but I know he
6 was -- one of the reasons he left, he was on the road
7 300 days of the year, no family life. So he was
8 looking at everything all over the country. That's
9 where he got his Xactimate, I think, level two
10 training.

11 Q. I understand that Mr. Steinke had some role
12 at least in the Forest Ridge matter?

13 A. Yes. Kevin performs -- he's down in Houston
14 today climbing on a roof similar to this. So he
15 performs inspections for us every week, price reports,
16 does estimates.

17 Q. Other than yourself, Mr. Nierengarten, and
18 Mr. Steinke, did any other FBS employees have a
19 substantive role in FBS's work in the Forest Ridge
20 matter?

21 A. No.

22 Q. Is Jim Irmiter your son?

23 A. He is.

24 Q. He doesn't get a bio?



1 MS. KAPLAN: It's still under construction.

2 THE WITNESS: It's under construction.

3 He actually just rejoined us. That's why
4 there's not an updated bio.

5 BY MR. FORTIN:

6 Q. Has FBS ever worked with the Forest Ridge
7 Homeowners Association other than in this matter we're
8 here about today?

9 A. No.

10 Q. Has FBS ever worked with Ms. Kaplan's firm
11 other than on this Forest Ridge matter we're here
12 about today?

13 A. No.

14 Q. Have you personally ever worked with their
15 firm other than this Forest Ridge matter?

16 A. No.

17 MS. KAPLAN: I'm just going to object to the
18 form of the question, worked with. I'm not sure what
19 the scope of what your question refers.

20 BY MR. FORTIN:

21 Q. Sure. I intend my question just to refer to
22 matters where you or FBS or someone was retained as an
23 expert witness?

24 MS. KAPLAN: No.



1 THE WITNESS: No, we have not.

2 BY MR. FORTIN:

3 Q. Would that be true of Lindsay Consulting
4 Group as well?

5 A. Yes.

6 Q. Are you familiar with the name Glenn Hankins?

7 A. Of course, I read it in the depositions last
8 night. And based on that, was able to put two and two
9 together that he's the contractor that put the tarps
10 on the roof and has done some -- I think he did the
11 initial look at this thing after the storm, and some
12 mitigation kinds of things for them. But that's all I
13 know of him. I've not met him. I've not talked to
14 him.

15 Q. So you've never spoken to Mr. Hankins?

16 A. No.

17 Q. Have you ever communicated to him in writing
18 via email?

19 A. No.

20 Q. By phone?

21 A. No. I've looked at any documents that were
22 provided to us by counsel that he put his hand on. I
23 think there's some photos that he took, and there
24 might be an initial estimate or something, if I



1 recall. But all of that we disclosed to you.

2 Q. You're familiar with Hannah York, right?

3 A. Yes, very familiar. I was the one that
4 initially trained Hannah.

5 Q. And when was that?

6 A. It would have been prior to this -- I think
7 this was our first project with her on her own. And
8 when I say "on her own," that was one of the reasons
9 Kevin Steinke was sent to the project to get up on the
10 first, you know, four, five roofs with Hannah to,
11 again, re-go through -- go back through our process
12 with her.

13 I met with Hannah in Houston, and we went
14 through, I think, five or six roofs together. I did
15 the marking on the first roof, all slopes, and she --
16 then I asked her to, you know, watch what I'm doing
17 and then asked her to go through and X out anything
18 she didn't think was hail or a question mark that
19 she -- for discussion purposes. We were tracking on
20 about 90 percent of what I marked. We had discussions
21 on two or three. I purposely marked a couple that
22 were mechanical damage and that were manufacturing
23 defects, and she caught those. And then the next five
24 roofs, she proceeded to mark those, and I repeated the



1 role that she played on those. And by the time we got
2 done with that inspection and then looking at the
3 windows, the sides, the downspouts, very clear to me
4 she knew what she was doing. I was very comfortable
5 turning her loose on any inspection that we could do.

6 Q. Other than your personal experience with her
7 on that occasion and any other interactions you've
8 had, are you familiar with her professional
9 qualifications?

10 A. Yes. I also got -- and I can't tell you
11 right now what those were, but I did get some
12 references from people who have worked with her
13 before. And everything came back glowing.

14 I'll even go on record to say I offered her a
15 job, and she decided at this point not to. She likes
16 the subcontractor role. So maybe that will change.

17 Q. I'm handing you Exhibit 157.

18 A. Yes.

19 Q. And that is the FBS Inspection and Consulting
20 Services Agreement with the Thompson, Brody & Kaplan
21 firm in connection with this Forest Ridge matter,
22 right?

23 A. Yes, it is.

24 Q. And that's your digital signature dated



1 September 20, 2017, on the last page?

2 A. It is, yes.

3 Q. On the first page under the heading, I guess
4 it's 1(a)(1), and this is part of what's described as
5 a Phase 1 Nondestructive Building Survey?

6 A. Yes.

7 Q. Should that say nondestructive or is that
8 supposed to say nondestructive?

9 A. You know, that's the first time anybody has
10 ever pointed that out. Because technically
11 deconstruction is a philosophical theory, the
12 deconstructionist movement. So I guess
13 philosophically speaking, we did more than that.

14 So I appreciate that, Counsel. We might make
15 a change there. But yes, this is essentially saying
16 that we are not going to do destructive inspections in
17 that phase without additional authorization.

18 Q. The first item listed under that heading
19 refers to reviewing all documents in the possession of
20 the building owner and/or building manager, public
21 adjuster, or attorney representing the client. And it
22 mentions specifically photos, blueprints, insurance
23 company correspondence, repair estimates, adjusters
24 estimates, and maintenance records. Have I fairly



1 captured that paragraph?

2 A. You have.

3 Q. Did FBS obtain all those documents from
4 Forest Ridge in this case?

5 A. What we retained -- what we received from
6 Forest Ridge would have been sent to you in the
7 document discovery request, and it would be in what's
8 called "Client File." So whatever is in the client
9 file is what we were given at intake.

10 In addition, there would have been an intake
11 sheet that we filled out, which you also should have a
12 copy of, that would have been, you know, the
13 association, the address. On there would have been
14 the date of loss that we were given. That's where we
15 would get the date of loss. So that should also be in
16 the file. If not, I can make a call at the break and
17 make sure that that gets sent over.

18 One important point on one that I want you to
19 note, I want to note for the record as well, it
20 doesn't say insurance policy. We really don't care
21 about the insurance policy. We don't care about
22 coverage. We really go out there with a feeling that
23 we're representing the buildings that we're
24 inspecting.



1 Q. If the documents that have been produced by
2 FBS in this litigation do not include any maintenance
3 records, would that mean that FBS did not receive any
4 maintenance records from Forest Ridge?

5 A. That's exactly what that would mean.

6 Q. Would the same be true of blueprints or any
7 other type of document?

8 A. Absolutely true, yes.

9 Q. Item 2 states: Interview property owner or
10 occupants to establish locations where exterior and/or
11 interior damage have occurred. Did I capture that
12 accurately?

13 A. Yes.

14 Q. Did FBS interview the property owner or any
15 occupants?

16 A. No. We were told there was no interior
17 damage associated with the claim. This is a general
18 boilerplate Phase 1 that goes on all of our
19 agreements. That would be more probative to water
20 damage, water intrusion in a bunch of units in a
21 building like this. So we got to take -- so we got to
22 come in this room. We got to look and there's three
23 ceiling tiles that are stained. We want to find out
24 from that building owner or that person occupying the



1 office when did those stains occur. They've been here
2 for 20 years. Oh, okay, it's probably not part of the
3 storm damage.

4 Q. If you turn to page 2, at the top, cost of
5 services.

6 A. Yes.

7 Q. 37,000 plus travel expenses?

8 A. Yes, fixed price.

9 Q. Has that all been paid?

10 A. It has.

11 Q. A few paragraphs down, it refers to the
12 possibility of additional work outside of the scope of
13 services.

14 A. Yes.

15 Q. And it says, "This additional work will be
16 billed on an hourly basis?"

17 A. Yes.

18 Q. Has any work by FBS in this matter been
19 billed on an hourly basis?

20 A. I don't think so. I think the additional
21 work that I did on the supplemental report was done on
22 a fixed fee. I think it also says, "Or a fixed fee
23 basis." At least that's the spirit of the agreement.
24 And so I think we gave them the option to say, hey,



1 we'll kick this out for this amount of money. They
2 agreed to it.

3 And then today's deposition, billing was sent
4 for that yesterday based on the deposition rates that
5 we have. And that was sent to counsel.

6 Q. So is there a separate agreement for the
7 supplemental report?

8 A. No, it's included in this.

9 Q. Has FBS been paid or will it be paid any
10 additional sums for that supplemental report beyond
11 the 37,000 that's set forth in this document?

12 A. I can't tell you if we've billed it yet or if
13 we have been paid.

14 Q. Do you expect to be paid something for doing
15 that?

16 A. Yeah. It took some time.

17 Q. If you have billed it and/or it has been
18 paid, would you produce a copy of that invoice to
19 Ms. Kaplan to send my way? If it hasn't been billed
20 or invoiced yet, could you see that when it does, a
21 copy of it comes my way?

22 A. I will.

23 Q. Thank you.

24 Mr. Nierengarten, I understand, just prior to



1 his deposition did a brief inspection of the property?

2 A. Yes.

3 Q. Do you know whether FBS has billed
4 Forest Ridge for that time?

5 A. Yes, I'm guessing that they bill that as part
6 of his deposition prep, and so there would be an
7 invoice that would have been sent with the travel
8 expense and the deposition. I don't know the status
9 of payment on that.

10 Q. When that comes down the pike, if I could get
11 a copy of that, too. Thank you.

12 A. Not a problem.

13 Q. I'm handing you Exhibit 158. Can you just
14 confirm those are all FBS's invoices that...

15 MS. KAPLAN: would have been produced as of
16 the date of our expert disclosures, January 26, 2018.

17 MR. FORTIN: Yes. Thank you.

18 THE WITNESS: Yes.

19 BY MR. FORTIN:

20 Q. The second to last invoice refers to a report
21 Phase 3. And the consulting agreement we just looked
22 at I think just had a Phase 1 and a Phase 2?

23 A. Yes.

24 Q. So is that just a scrivener's error?



1 A. Yes.

2 Q. Should that say Phase 2?

3 A. Phase 2 is what it should say.

4 Q. And then the last invoice is for additional
5 work performed, wall measurement report?

6 A. Yes.

7 Q. What is that?

8 A. Well, we noticed in the documents that --
9 well, once we got done inspecting and we knew that the
10 scope of your work, as you see by the document,
11 included putting together an estimate, once we
12 conducted our inspection and determined that the
13 siding needed replacement, we did not have in the file
14 any measurements for that, other than measurements
15 that were taken about J.S. Held in their field notes.
16 They measured all of the buildings for siding. But we
17 weren't going to trust those measurements. So rather
18 than going back down there, we ordered EagleView
19 measurements of the siding, and that was the cost for
20 it.

21 Q. When you refer to J.S. Held's measurements,
22 are you referring to whatever is contained within
23 their estimate?

24 A. No. They actually have separate field notes



1 where they on each building -- you know, if you
2 understand and you're trained in how to take field
3 notes for estimating, I interpreted those triangle
4 10-by-10, they're basically mapping out the siding for
5 each building in terms of the square footage.

6 Q. But you didn't have those when you prepared
7 the initial Joint Storm Damage Report in this case,
8 right?

9 A. I don't know if we had them or not. I think
10 we did. I think we had those. Maybe we didn't. I
11 don't know sequence-wise. At any rate, we didn't have
12 information that we felt we could use, so we ordered
13 the EagleViews as an additional fee.

14 Q. Should the EagleViews have been part of what
15 was produced to my firm with FBS's file?

16 A. Yes. And I would anticipate that the firm
17 that hired us would want to see those as well to
18 verify that we actually ordered them, because they
19 paid for them. So yes, you should have those.

20 Q. I'm handing you Exhibit 159. It's the
21 EZ Claim invoice. You understand EZ Claim to be
22 Hannah York's company?

23 A. Yes.

24 Q. According to this invoice, she was paid a



1 flat fee of -- or to be paid a flat fee of \$10,200 to
2 inspect all 51 buildings?

3 A. Yes.

4 Q. Has she been paid that amount?

5 A. She has.

6 Q. Has she been or will she be paid any more by
7 FBS on this Forest Ridge matter?

8 A. No. Any additional work is direct bill for
9 her for trial or deposition.

10 Q. By direct bill, you mean bill to someone
11 other than FBS?

12 A. Correct. Yeah.

13 Q. And I'm handing you Exhibit 209. Just take a
14 look at the first page of that, and let me know if
15 that's Brian Johnson's invoice for his services as a
16 consultant in this matter?

17 A. Please understand I don't see these invoices.
18 Okay. They go to directly to our bookkeeping/billing
19 department. But I certainly recognize this as
20 something from Brian Johnson, and it does say -- but
21 it's not marked paid, so I don't know what it's for
22 because it doesn't have a -- there, Forest Lake.

23 Q. Right. It says Forest Lake not Forest Ridge.
24 I think he said that was an error.



1 A. Yeah. I think you covered that in the
2 deposition, yes. So yeah, this appears to be -- he
3 agreed to \$3,500. This appears to be that invoice.

4 Q. Does FBS expect to pay him any more in
5 connection with this Forest Ridge matter?

6 A. No. And I know on this one, we booked his
7 flight for him because he was going down with Kevin,
8 and he rode with Kevin in the rental car.

9 Q. Do FBS employees log their time to a specific
10 file when they're doing a flat-bill project?

11 A. No. We used to for the first eight years of
12 our practice, as your former firm was well aware, and
13 we were told often nobody saw bookkeeping like that.
14 And it was to within five-minute increments. We don't
15 do that anymore. We've gathered enough information to
16 recognize how long something's going to take and how
17 to bill for it, so we bill on a set price.

18 MR. FORTIN: I'm going to hand you what I'm
19 marking as Exhibit 249.

20 (Whereupon, Exhibit No. 249 was
21 marked for identification.)

22 BY MR. FORTIN:

23 Q. And I'd like you to turn to page 11 of this
24 exhibit, and you'll see there an email dated



1 September 11, 2017, from Sarah Jin to Tina Shoals
2 (phonetic). Do you recognize the name Tina Shoals?

3 A. Yes.

4 Q. Is she a current or former employee of FBS?

5 A. Former.

6 Q. And was she an employee of FBS as of
7 September 11, 2017?

8 A. Yes.

9 Q. Understanding that you are not the sender or
10 a recipient of this email, do you recognize it as
11 being part of FBS's file opening process, or I think
12 you used phrase intake form earlier?

13 A. Well, this is the intake form. So the intake
14 form was sent to this person, and this person,
15 whoever, filled out the information on here. So it
16 would have been sent, "A" was empty. They filled out
17 in dark letters the address. "E," they filled out
18 date of loss, policy number, claim number. So
19 anything that is in black is what they filled out.
20 It's programmed to do that.

21 And then I think in our file, we subsequently
22 then printed this off as an actual intake form.
23 Because I looked at it last night in our file, so it
24 would be duplicate to this.



1 Q. So this email would have been when the
2 August 2, 2015, date of loss was provided to FBS?

3 A. Yes.

4 Q. Why does FBS ask what has been covered and
5 not covered by insurance?

6 A. At the time this comes in as an intake form,
7 we're never sure if this is going to all of a sudden
8 change once we start pricing it, once we start getting
9 into looking at it. If all of a sudden the client is
10 going to say out of the clear blue, hey, let's go to
11 appraisal. It happens a lot, particularly in the
12 appraisal market today. So this could have easily
13 from September 11 to a week later flipped to an
14 appraisal.

15 As an appraiser, it's very important for me
16 to know if there's coverage that's been established or
17 not, because in some states, we can't go to appraisal
18 if there's been no coverage without sometimes a court
19 order. So that's why that's on there. Okay.

20 Q. If you turn the page, in the field for the
21 type of loss, it looks like it says, "property damage
22 to the roofs of 51 multistory buildings as a result of
23 a hail storm/event." Does this indicate that when FBS
24 first received this assignment that siding was not



1 part of it?

2 A. No.

3 MS. KAPLAN: Object to the form of the
4 question.

5 THE WITNESS: Excuse me.

6 BY MR. FORTIN:

7 Q. Does this -- at some point -- let me try that
8 again. FBS inspected siding and roofs out at
9 Forest Ridge, right?

10 A. Yes.

11 Q. Do you recall when FBS was first asked to
12 include the siding in their inspection?

13 A. I included it. As soon as the intake form
14 came up, what we do -- and you will see this again in
15 the documents we submitted, you'll see some Google
16 Earth photos, and you'll see documents that were sent
17 to us by counsel. When I pulled it up and saw that it
18 was vinyl siding and that it's a hail storm, I
19 immediately said, we're including looking at the
20 siding, as well, on this.

21 Q. And who did you communicate that to?

22 A. Mr. Thompson, Steve Thompson, yeah. He said,
23 is that going to cost any extra. I said, no, because
24 quite frankly, we have to put the ladders up anyway --



1 you're laughing at Steve.

2 MS. KAPLAN: Sounds like him.

3 THE WITNESS: Is that going to cost any
4 extra. I said, no, because basically we walk around
5 every building anyway because we're looking for
6 collateral signs, spatter, dents in downspouts, dents
7 in gutters, window screens that are damaged, those
8 kinds of things. And so that was something we would
9 just do.

10 (Whereupon, Exhibit No. 250 was
11 marked for identification.)

12 BY MR. FORTIN:

13 Q. I'm going to hand you what I marked as
14 Exhibit 250. And I'll ask you to just note at the
15 bottom of that first page that there is starting there
16 an email from Steve Thompson to Ms. Kaplan and a
17 Henry Kolbe.

18 A. Yes.

19 Q. September 22, 2017. Does that name -- is
20 that familiar to you?

21 A. No.

22 Q. I'll represent to you that Mr. Kolbe is a
23 member of Forest Ridge Board of Directors.

24 I take it that you have not seen this email



1 from Mr. Thompson before?

2 A. I'm not copied on it, so no.

3 Q. If you'll turn to the second page, the third
4 paragraph down that begins with the word "instead."

5 A. Yes.

6 Q. Take a moment, it shouldn't take you long,
7 you said you speed read, just to read that paragraph,
8 and let me know when you're done.

9 A. I think that I should use him to introduce me
10 at my talks that I give around the country. Very
11 glowing.

12 Q. Can I take that to mean that you're done
13 reading the paragraph?

14 A. I am.

15 Q. In the first sentence there -- actually, I
16 guess, it's the second sentence. He says, "I worked
17 with and against Mr. Irmiter's firm." Do you see
18 that?

19 A. Yes.

20 Q. Do you recall any instance prior to
21 September 22, 2017, where FBS had worked with or
22 against Mr. Thompson's firm?

23 MS. KAPLAN: I'm going to object to the form
24 of the question. The sentence says, with and against.



1 It's not clear, and I think it's inappropriate to ask
2 the witness to interpret Mr. Thompson's email. But I
3 think if you want to rephrase the question, to include
4 that wording instead of with or.

5 BY MR. FORTIN:

6 Q. Yes. I'm sorry.

7 As of the date of this email, September 22,
8 2017, had FBS ever worked with and against
9 Mr. Thompson's firm?

10 A. We had never worked with his firm.

11 Q. Had you ever worked against his firm?

12 A. I think he represented -- or their firm
13 represented one of the insurance companies in one of
14 the appraisals I worked on.

15 Q. That would be the willows appraisal?

16 A. I don't remember, but maybe.

17 Q. And as of the date of this email, is that the
18 only time you had come across Mr. Thompson?

19 A. That I recall. However, in the history of
20 our firm, we've done a lot of stuff in Illinois even
21 back as far as 2003, 2004. So is it possible that his
22 firm was involved in some of those, it could have
23 been, but I don't recall.

24 Q. The third line of this paragraph, in the



1 middle of that line there's a sentence that starts,
2 "Additionally, they advised that they represented a
3 number of associations in the Chicago area where the
4 storm occurred and were successful in recovering for
5 roof damages in each and every instance." Did I read
6 that correctly?

7 A. Yes.

8 Q. Is that information that you had communicated
9 to Mr. Thompson prior to or on September 22, 2017?

10 A. No.

11 Q. Had anyone else from FBS communicated with
12 Mr. Thompson or anyone at his firm in connection with
13 this Forest Ridge matter?

14 A. No.

15 Q. So is it fair to say you don't know where he
16 got that information from?

17 A. I have no idea.

18 Q. Okay.

19 A. It's a small world out there.

20 Q. As of September 22, 2017, had FBS represented
21 any associations in the Chicago area in connection
22 with the August 2, 2015, storm?

23 A. No.

24 Q. The next sentence says, "I have asked



1 Mr. Irmiter to review the estimates and photographs."
2 I'll stop there. As of this date, do you recall
3 having received any documentation from Mr. Thompson's
4 firm to look at?

5 A. Yes. He sent us -- I said, send us over the
6 preliminary file; I'll take a look at it. That
7 happens every day in our practice. That's how we get
8 engaged essentially.

9 So what I would have done at that point of
10 time is, I would have -- the very first thing I would
11 have done is, I would have gone to one of the
12 documents that had the address. I would have gone to
13 NOAA, the NWSI, Severe Storm Data Inventory. I would
14 have plugged in that address. I would have looked at
15 the date of loss. And I would have seen what is NOAA
16 showing me. Is there weather in the area that day,
17 and there was a crap load of weather in the area that
18 day on every one of the sites that I looked at.

19 So to me, that was an indication that there's
20 clearly a storm that occurred on that day. And the
21 reason we do that is, you have to understand,
22 Counselor, 30 percent of the work that comes into our
23 office we say no to, because people send us crap files
24 of damage that really doesn't exist. And one of the



1 ways that we vet through that is getting an initial
2 file, looking at that file, and checking weather data.
3 Sometimes those evolve into what's called a scoping
4 visit where we simply go down to see, boots on the
5 ground, are we seeing any damage. Maybe the weather
6 data's wrong, maybe there actually is damage.

7 In this case, everything seemed to stack up
8 to the date of loss on a preliminary basis. I think
9 that's what he might be referring to.

10 Q. My question was really just strictly as to,
11 I'm trying to understand what estimates and what
12 photographs he provided you that you had already
13 reviewed by at that point in time. So let's look
14 at -- I'm going to hand you the Joint Storm Damage
15 Report, which is marked as Exhibit 160. Just so we
16 have a better digital copy. You'll see the stamp on
17 the front is electronic rather than --

18 MS. KAPLAN: And this may shortcut things,
19 but the documents that we provided I think in the
20 email that you marked as 249, there's subsequent
21 reference to our firm uploading documents via Dropbox.

22 MR. FORTIN: Yeah.

23 MS. KAPLAN: And then those documents were
24 produced as part of the client file with the FBS file.



1 MR. FORTIN: Yes, that's what I assumed is
2 what happened.

3 THE WITNESS: Yes.

4 BY MR. FORTIN:

5 Q. So you've already turned to the right page, I
6 see, of Exhibit 160. That's FBS's Joint Storm Damage
7 Report?

8 A. Yes.

9 Q. And you were looking at section 1.6?

10 A. Yes.

11 Q. The bullet points listed in that section, are
12 you able to tell me, as we sit here today, whether you
13 had received and reviewed all of those documents as of
14 September 22, 2017?

15 A. Yes, I had.

16 what was that date that you asked me,
17 September what?

18 Q. 22, 2017.

19 A. Yes, and that would make sense. Because if
20 you take look at Exhibit 157, all right, and you look
21 at when I signed it and sent it, I'm already in the
22 process of -- I've already developed a scope; I've
23 already developed a price; and I've already sent out
24 an agreement that predates this email. So, again, I



1 couldn't have done any of that without this
2 information right here.

3 Q. When you say you've developed a scope, what
4 do you mean by that?

5 A. A scope of inspection. Not repair, of what
6 are we going to do down there to inspect these
7 projects.

8 Q. Other than the documents listed in section
9 1.6, did FBS ever receive any other documents from
10 Forest Ridge or Ms. Kaplan's firm other than -- or let
11 me clarify. As of the date of this report, had FBS
12 received any other documents from Forest Ridge or
13 Ms. Kaplan's firm?

14 MS. KAPLAN: So as of November 16, 2017.

15 THE WITNESS: No.

16 MR. FORTIN: Turning back to Mr. Thompson's
17 email. Can someone help me out, we were calling that
18 Exhibit 250, right?

19 MS. KAPLAN: Yes.

20 MR. FORTIN: Thank you.

21 BY MR. FORTIN:

22 Q. There's a sentence maybe about three-fifths
23 of the way through this paragraph that starts out "He
24 believes the damages are much closer to \$4 million



1 than they are to 2 million." Do you see that?

2 A. Yes.

3 Q. At this point in time, what was the basis
4 for -- or let me try that again. Is that an accurate
5 statement as far as your belief at this point in time?

6 A. Yes, because I thought there was interior
7 damage. Looking at the tarps and things, I thought
8 that we were also going to be looking potentially at a
9 bunch of exterior stuff, and there wasn't. It wasn't
10 there. So from that standpoint, that would have
11 increased the numbers exponentially, so...

12 Q. Wait. So the \$4 million that was quoted
13 there, is that --

14 A. It's ballpark.

15 Q. Right. I understand. I'm just trying to get
16 a handle on what's in that ballpark. Does it include
17 what you anticipated to be interior damages?

18 A. That ballpark was arrived at by looking at
19 similar projects around the country. We work in 38 to
20 40 different states. We do projects of this size.
21 That's looking at similar kinds of projects to say
22 where have the numbers come in with 51 buildings or
23 42, whatever the number was on these buildings. And
24 the numbers generally come in anywhere from, you know,



1 1.8 million to 5 million. That was what I recall
2 saying to Steve. How he chose to use those numbers,
3 okay, I can't control that in how he communicates it
4 to his client. At that point, we had not produced an
5 estimate.

6 Q. At this point in time, had you formed a
7 belief as to whether -- let me try that again.

8 At this point in time, had you formed a
9 belief as to whether hail or wind from the date of
10 loss that was provided to you would require
11 replacement of any siding at the property?

12 A. I hadn't determined at this point in time
13 that hail had even damaged the property. I hadn't
14 been there. That would be absolutely egregious of me,
15 as a causation expert, to determine causation before I
16 got to the site and do my own ground truth
17 investigation or have my trained staff and
18 subconsultants do that.

19 So no, I had no opinion other than the fact
20 there was a storm that went over this site on the date
21 of loss. That's all I had. I could have gone down
22 there and said, guess what, for some reason this storm
23 missed this entire site, and there's no damage.

24 Q. Have you ever communicated directly with



1 anyone at Forest Ridge?

2 A. No.

3 Q. Have you ever communicated directly with the
4 property manager for Forest Ridge?

5 A. No.

6 Q. Have all of your communications
7 regarding -- strike that. That was a bad question.
8 I'm always disappointed when the transcript comes back
9 and when I say "strike that," it doesn't make it
10 disappear. It just has me saying "strike that."

11 Did you ever communicate directly with
12 Hannah York regarding this Forest Ridge matter?

13 A. Absolutely. Oh, yeah.

14 Q. And did any of those communications take
15 place in person?

16 A. No, they were via phone. In fact, after her
17 first day of inspecting, I remember calling her just
18 to say, hey, how did it go, what did you find, what
19 kind of damage are you finding down there? I think it
20 might have been the second or third day of her
21 inspection where we began to get data from her
22 downloaded to our server so I could actually start
23 looking at some photos. Because I'm curious at that
24 point. It's a big project, you know. What I'm



1 curious about at that point in time is I received a
2 pretty sizeable downpayment check, am I returning that
3 because we have to stop the inspection, which happens
4 occasionally. And that was not the case. There
5 certainly was damage there, so...

6 Q. Did you ever communicate with anyone with the
7 Village of Streamwood in connection with this
8 Forest Ridge matter?

9 A. Yeah, I had a conversation with the Building
10 Code official, and I can't remember his name now. I
11 know you took his deposition.

12 Q. Does John Peterson sound familiar?

13 A. Yes.

14 Q. So you had a conversation with John Peterson?

15 A. Yeah. I reminded him that we had done a
16 project there a few years before, wanted to find
17 out -- I said, I looked online. We got all the data.
18 I'm looking at, you know, circa 2012 stuff. I'm
19 looking at circa now. Looks like the rules haven't
20 changed with regard to your matching issues, is that
21 true, and he confirmed that they hadn't. I didn't ask
22 him to repeat that back in an email. I didn't ask any
23 of those. But that's a conversation that I had
24 Building Code official to Building Code official.



1 Q. when you used the phrase -- or the word
2 "data" a moment ago, are you just referring to local
3 amendments to the Building Code?

4 A. Yeah, the local ordinances that we have put
5 into the report here, and my interpretation of them
6 was consistent with how he told me he would interpret
7 those.

8 I want to go back on record. I didn't say
9 this. I do recall I did read his deposition as well.

10 Q. In preparation for today?

11 A. Yes, in preparation for today, I did read his
12 deposition, and have a very clear understanding what
13 he said in his deposition is consistent with how he
14 told me he would interpret siding and roofing
15 replacement.

16 Q. And when did he tell you how he would
17 interpret siding and roofing replacement?

18 A. This would have been the call that I made
19 some time between when we were retained and after the
20 inspection.

21 Q. So it's as part of this phone conversation
22 you've been describing?

23 A. Yes.

24 Q. Was that the only communication you had with



1 Mr. Peterson regarding this Forest Ridge matter?

2 A. Yes.

3 Q. When you called him --

4 A. By the way, I did not identify that it was
5 Forest Ridge.

6 Q. You're saying you didn't identify that to
7 Mr. Peterson?

8 A. No. I said we have an association we're
9 working with in the city of Streamwood. I did not
10 identify Forest Ridge.

11 Q. When you were describing your phone
12 conversation with him, you mentioned that you had
13 reminded him that you were involved in a previous
14 property out there. Would that be the Southgate?

15 A. Yes.

16 Q. Did you have any communications with the
17 village of Streamwood in connection with the Southgate
18 matter?

19 A. I did not. Brian Johnson did. I stopped in
20 during my inspection to Southgate, but they were out
21 in the field. So they only had the front permit desk
22 person there. I picked up copies of the ordinances
23 when I was there that are also addressed in that
24 report, but I didn't have a chance to have a face to



1 face.

2 Q. Other than internally at FBS, Mr. Johnson,
3 Ms. York, and Ms. Kaplan's firm, did you communicate
4 with anyone else regarding this Forest Ridge matter as
5 of the date of your Joint Storm Damage Report, which
6 was November 16, 2017?

7 A. We didn't mention Mr. Johnson in that list,
8 but including Mr. Johnson, no.

9 MR. FORTIN: Do you want to take five.

10 MS. KAPLAN: Well, we both are going to have
11 to have some lunch at some point. I will defer to
12 Mr. Irmiter whether he thinks he can go for a little
13 while longer. I would prefer personally not to wait
14 more than another 45 minutes before we break for
15 lunch.

16 MR. FORTIN: That's fine with me.

17 MS. KAPLAN: But if you want to break now.

18 THE WITNESS: If I could just have five
19 minutes to use the bathroom, let's come back.

20 (Whereupon, a short break
21 was taken, after which the
22 following proceedings were
23 had:)
24



1 BY MR. FORTIN:

2 Q. You did an inspection on November 9, 2017,
3 right?

4 A. Yes.

5 Q. Do you recall roughly how long you were on
6 site that day?

7 A. Seven hours.

8 Q. Do you recall how many buildings you went on?

9 A. About 10.

10 Q. And how did you select those 10 buildings?

11 A. In a couple of instances, there was photos
12 that were taken either by Kevin and Brian or by Hannah
13 that when I looked at them and blew them up, they were
14 blurry. I mean, the camera just didn't focus as well.
15 So I wanted to go back to some of those individual
16 roofs, and with my camera holding it about this close
17 and putting it on the microscopic setting, get some
18 photos that I would utilize at trial, if this went to
19 trial.

20 Secondly, I wanted to make sure that I was
21 covering all of the compass points. Some of the
22 buildings face, because -- so they're on curves and
23 things, so you don't necessarily have true north,
24 south, east, west. Sometimes you have southeast,



1 sometimes you have northwest directions, those things.
2 So I wanted to make sure I was catching all of the
3 compass points. And 10 buildings allowed me to do
4 that.

5 I will add one more thing. The other thing I
6 wanted to document, even though they didn't photograph
7 these, I was told that there were some mechanical
8 damage or manufacturing damages that they saw out
9 there. So I wanted to document those, and I did. I
10 think you'll see in my photos where I got two bundles
11 of shingles that are clearly -- and honestly, I
12 don't -- they wanted me to look at those. They wanted
13 my opinion of what I thought that was. If you install
14 shingles and you are up on the roof on a hot day and
15 you're pulling them apart and installing them, that's
16 exactly what they look like when they stick together.

17 Q. Getting those up-close photos and documenting
18 some of the mechanical damage, were those the only
19 two -- I don't want to use the word gaps, but were
20 those the only two things that you felt you needed to
21 supplement Kevin and Brian and Hannah's inspections by
22 addressing?

23 A. Well, I wanted to also get my own eyes on the
24 site, no question about it. The other thing I wanted



1 to take a look at the wind issues, the wind damage
2 that had been addressed by Rocco at that point in time
3 and which confirmed my thoughts that there were some
4 pretty substantial winds that day.

5 So you'll see where I'm actually taking
6 photos from the ground, and what we would tell a jury
7 is that if you have enough experience in looking at
8 wind damage on a peaked roof, depending on the slope
9 of the roof, the height of the building, and how tall
10 you are, you can actually put yourself in a position
11 with your camera where you can scan across the roof
12 and from the ground, you can actually see the lift in
13 shingle tabs, and that's what I was taking pictures
14 of. So, again, that was just to confirm, based on how
15 I look at wind damage, that there was damage to the
16 shingles, many, many debonded shingles.

17 **Q. Did you also look at the siding of those 10**
18 **or so buildings while you were on site?**

19 **A.** I looked at the -- I walked around the entire
20 complex. So I walked, you know, quickly, but I walked
21 every building. And the problem with determining the
22 siding damage, unlike other vinyl siding projects
23 we've looked at typically, was on one side, depending
24 on how a building was acclimated, you might have had,



1 you know, two sides. It was limited -- it's also hard
2 to see, quite frankly, and I believe that -- I feel
3 confident there's more damage out there than we were
4 able to ascertain, because you literally would have to
5 put a ladder up and move across the buildings to get
6 all of it.

7 Q. When you say "ascertain," do you mean
8 document through photographs?

9 A. Yes.

10 I mean, there's even one, I think, of one of
11 my photos where I had walked around the building, did
12 not see any hail damage to siding. And then you see
13 me up on the roof, and I'm shooting over to the next
14 building, because as I'm looking, oh, didn't see it
15 from the ground but saw it from up above. So I took a
16 photo of it.

17 Q. Am I correct that FBS, including you, did not
18 document hail damage to the siding on every building?

19 A. Correct.

20 Q. Do you know roughly how many of the buildings
21 FBS did document siding damage to?

22 A. Half, about half of them, yeah.

23 Q. And if we wanted to know exactly how much, we
24 could do that by going through the photographs taken



1 by yourself, by Mr. Johnson, Mr. Steinke,
2 Mr. Nierengarten, Ms. York to see what buildings they
3 took photographs of siding damage on, right?

4 A. Well, yes. If one were looking at the only
5 reason to replace or do anything with siding would be
6 damage from hail.

7 Q. Right. And that's all I'm asking about right
8 now.

9 A. Siding is going to have to be manipulated for
10 another reason as well, and in my opinion, that's
11 going to really tip us over the edge on the siding
12 issue.

13 Q. Right now I'm not talking about repair,
14 replacement, or methods of doing that. I'm just
15 talking about the existence and identification of the
16 actual physical damage.

17 A. Yes.

18 Q. As part of your inspection, you were looking
19 for, I take it, hail and wind damage, right?

20 A. Yes.

21 Q. You also said you were trying to document
22 some mechanical damage?

23 A. Yes.

24 Q. And earlier you mentioned looking for



1 collateral. I don't know if you said collateral
2 damage, but you used the phrase "collateral," right?

3 A. Yes.

4 Q. Is that something else you were looking for
5 during your inspection?

6 A. Yes.

7 Q. And can you describe that for me a little bit
8 more what you mean by collateral?

9 A. Damage to screens, damage to downspouts or
10 gutters, damage to cedar decking or cedar material,
11 spatter that would show up on concrete, particularly
12 concrete that's got pollutants on it.

13 And then the other thing that I was looking
14 at -- because we knew the hail was small. I mean, all
15 the reports are, you know, 1 to 1.25, and that's what
16 all the photos seem to indicate as well. What I
17 wanted to focus on a little closer was -- and you'll
18 see where I've actually got my camera sitting on the
19 deck so that you can see the side view and the actual
20 indentation. What I'm looking for is the depth of
21 that indentation, as well, because that tells me that
22 we got some pretty darn hard hail. And the way that
23 we explain that to a jury is, you can have a malted
24 milk ball that is the same size as a marble. And I



1 can take both of those in this room, and I can shoot
2 them with exactly the same terminal velocity from a
3 sling shot. And the malted milk ball is going to go
4 poof, and the marble is going to go right through the
5 wall. So it's not always about size. And this was
6 clearly some very hard hail because it put holes in
7 the roof in a couple of areas that I saw.

8 Q. In section 1.7 of the report, there's a list
9 of reference materials?

10 A. Yes.

11 Q. And one of those reference materials is the
12 Haag Education, Haag Certified Roof Inspector Program,
13 Residential Edition?

14 A. Yes.

15 Q. Is that a program that you had personally
16 participated in?

17 A. No. I have listened to Tim Marshall,
18 Richard Herzog speak. I've read all of their
19 technical papers. I've read all of the asphalt
20 testing documentation that they've done on various
21 products. I have read this cover to cover. And
22 obviously have thoughts and opinions on it. That's
23 why it's listed here.

24 Q. When you say you have thoughts and opinions



1 on it, I take it you did not agree with everything it
2 contains?

3 A. You know, I don't know that I would say --
4 it's how it's presented, that's the issue. If you
5 really look at it closely, it's a great manual if you
6 don't know anything about roofing products and want to
7 learn about how they're made and how to install them
8 in a compliant manner so that there's not a defect in
9 the design. wonderful introduction program. They
10 then show you examples of what they call mechanical
11 damage, damage that's caused by humans to various
12 roofing products. And what's really nice is, if you
13 have the actual manual and you go back to the end
14 where they get in very limited about actual damage
15 caused by like hail and you fold over and you compare
16 that hail damage picture to the one that's a
17 mechanical, how would anybody ever be able to
18 differentiate between the two in the field? They're
19 identical. That's the problem that I have. They
20 don't do as good a job really digging into the hail
21 damage issues as much. And that shows in the reports
22 that they write. Their focus is always on the four
23 exclusions that are in the policy, as opposed to the
24 actual storm damage. And the class is geared towards



1 that.

2 (Whereupon, Exhibit No. 251 was
3 marked for identification.)

4 BY MR. FORTIN:

5 Q. I'm handing you what I'm marking as
6 Exhibit 251, and I'll represent to you this is not the
7 entire manual that was produced to us from FBS. It's
8 just some excerpts from it.

9 A. Yes.

10 Q. But starting with the first page, do you
11 recognize this as being the cover page for the Haag
12 Roof Inspector Material that's listed in section 1.7?

13 A. It's one of them. I don't know if it's an
14 updated one or which version it is. But yes, it is
15 one of them.

16 Q. And based on what you were saying a moment
17 ago, I take it this is a document you were familiar
18 with?

19 A. Yes.

20 Q. And have read through?

21 A. Yes.

22 Q. And as you leaf through it, you'll notice
23 that there's some handwriting there. I believe that
24 is Mr. Nierengarten's. I think this was produced



1 directly from him.

2 A. How did we produce this without the copyright
3 violations?

4 MS. KAPLAN: So for the record, this is
5 produced at my direction.

6 THE WITNESS: Okay.

7 MS. KAPLAN: I directed Mr. Nierengarten to
8 produce this, because it was requested as follow-up to
9 his deposition, and I explained that it would
10 otherwise be subpoenaed. And so it was produced at
11 our direction, and that's how it got to him.

12 MR. FORTIN: So you can't get mad at
13 Mr. Nierengarten.

14 THE WITNESS: Okay. All right.

15 BY MR. FORTIN:

16 Q. I'm not going to use the phrase or the word
17 "authoritative," but is this document at least -- do
18 you view it as a reliable guide for a hail or wind
19 inspection of the type that FBS was undertaking at
20 Forest Ridge?

21 A. It is a process that is utilized in the
22 industry in terms of using a certain geographic
23 boundary on a roof to determine within that boundary
24 how many imperfections there are in the shingles



1 within that boundary, whether those are due to a nail
2 popping through, somebody hitting it with a hammer, a
3 scuff mark from installation on the edge, hail damage,
4 or wind damage.

5 So yes, there's a method that you can
6 utilize. It is their method. It is not a method that
7 is a standard in the industry. It is an industry
8 practice that is done. And when I say "standard," I
9 look at industry standards as being things like the
10 Building Code, manufacturer's published instructions,
11 things are that are recognized by engineering
12 communities at large. So this is really a practice in
13 this situation. It can work very, very well when you
14 have a lot of buildings, because you can get a good
15 distribution of what's going on.

16 Interestingly enough, when you look at the
17 field notes that were provided from my review by
18 J.S. Held, the counts that they had were very similar
19 to the counts that we had on each roof. So they were
20 seeing the same kinds of things that we were seeing.

21 Q. If you'll turn to the second page of this
22 exhibit.

23 A. Sure.

24 Q. And you'll see in the bottom left corner the



1 actual page from the handbook that I printed out here.
2 This is page 4. And it is referring to in the upper
3 left, it uses the term directionality?

4 A. Yes.

5 Q. And you're familiar with that term in the
6 context of a hail and wind investigation, right?

7 A. Yes, I am. I will tell you that the diagram
8 that they have up here in the left-hand corner showing
9 the roof, I can show you diagrams from other sources
10 that will look different than this in terms of
11 directionality. This does not show the event of what
12 happens when there is wind and as the hail passes
13 over, you get impact on the back side. This is only
14 showing one form of directionality, so it can be
15 misleading. And that's one of the issues I have with
16 the class.

17 Q. Would you agree at least with the statement
18 below the picture there where it says, "Everything is
19 struck?" In other words, I take that to mean that
20 hail doesn't discriminate whether it's going to hit
21 the roof or a tree or the hood of a car?

22 A. Does not discriminate. Each one of those
23 products will have a different level of robustness to
24 it and will be affected differently.



1 Q. And the extent to which those things such as
2 plants, trees, car hoods, window screens are affected,
3 is that part of the collateral damage or collateral
4 observations you were referring to earlier as
5 something you look at?

6 A. Yes.

7 Q. And what's the reason why you look at those
8 things as part of a hail or wind inspection?

9 A. Well, sometimes, depending on when we're
10 there, it will allow us to begin to differentiate
11 between different storms. When you work in Texas,
12 it's not unreasonable to get an assignment, and by the
13 time you get there, there's been three more hail
14 storms and there were seven before that. So being
15 able to differentiate between storms is important. We
16 look for those kinds of signature patterns. We look
17 for spatter marks on certain types of materials that
18 will show up and at some point in time will disappear
19 depending on what the product is. So these are all
20 signatures that are important to look at, absolutely.

21 Q. At the beginning of your answer, you
22 mentioned depending on when you're there?

23 A. Yes.

24 Q. Do some of these indications or indicia of a



1 recent hail event disappear or fade or otherwise
2 change over time?

3 A. Yes.

4 Q. So if you're attempting to differentiate
5 between events, when is the ideal point in time to be
6 able to be at that property to view the damage and
7 these collateral matters we've been discussing?

8 MS. KAPLAN: Object to the form of the
9 question.

10 THE WITNESS: Well, in a perfect world, you
11 would conduct a survey over a period of time. You
12 would conduct a survey as close to the date of loss as
13 possible to look for the spatter and for the damage,
14 collateral damage. You would inspect it typically at
15 a later date, and then typically, if the work hasn't
16 been done, at a much later date.

17 One of the advantages we have over firms like
18 J.S. Held, over firms like Mr. Horvath who was also
19 involved in this, and we know each other, they
20 oftentimes are inspecting these sites right after the
21 storm. We often are inspecting them a year and a half
22 to two years later. So we're going to get different
23 data, no question about it. When hail strikes this
24 type of a roof, an asphalt roof, it's not



1 self-correcting and the damage will actually worsen.
2 so a lot of times seeing it a year and a half to two
3 years later, we're going to see better hail signatures
4 from that storm event than they're going to see right
5 on that day. we're also going to lose some signature
6 patterns on materials that oxidize, that leave
7 spatter, because they're going to fill back in with
8 pollutants, and we're going to lose some of that.

9 BY MR. FORTIN:

10 Q. So in that sense, is there a tradeoff in the
11 advantages and disadvantages of being able to inspect
12 immediately after a storm, as opposed to I think you
13 said a year, year and a half, or two years?

14 A. Yes, there are tradeoffs. And you have to --
15 that's why the ground truth investigation is so
16 important. That's why it's a very tactile process
17 when you're up on the roof. You wear your fingers out
18 because you are literally feeling. I will tell you
19 that -- and we would demonstrate this certainly for a
20 jury, and we have in the past. If I were to take some
21 representative samples of shingles that were damaged
22 in this storm to trial and put those in front of the
23 jury, which I did in the Interlocken case that is
24 mentioned. I think it's number one on this list now.



1 And what we asked the jury to do was to take the part
2 of the shingle that showed no damage and take their
3 finger and try and rub the granules off, and they
4 could not. And then I said, okay, now where this hail
5 hit, now take that. And they would go like that, and
6 the granules just fell off. That's what a hail shock
7 or a bruise does to the shingles.

8 So you can understand where if somebody's
9 looking at it three days after the storm and we're
10 looking at it a year, year and a half later with the
11 rain and the wind, what's happening at those impact
12 locations is continuing to lose granule, we're
13 continuing to expose the mat.

14 **Q. How long do spatter marks usually last?**

15 A. Depends on the material and it depends on
16 where you're located. Spatter is really -- there's
17 two things that spatter is removing. It's either
18 removing a pollutant like a black algae or something
19 like that or it is removing -- like in this picture
20 here, Exhibit 251, page 4, top right-hand corner, this
21 is an electrical box. If you go up to that electrical
22 box or any electrical box like it even downtown here
23 and rub your hand on it, your hand is going to show
24 gray on the fingers. That's oxidation of the paint.



1 So what this is doing is it's removing that oxidized
2 paint back to the original surface. How quickly will
3 that reoxidize depends on the sun and it depends on
4 its exposure to the weather. I've seen them reoxidize
5 in six months. I've seen signature hail patterns on
6 different sides of them two years later.

7 Q. Are you just referring to like electrical
8 boxes right now?

9 A. Yes. Electrical box, top of an air
10 conditioner, something that is going to oxidize, yeah.

11 Q. I recall seeing a few photographs of spatter
12 in your photo log?

13 A. Yes, on some cement and some windowsills.

14 Q. Was that the only spatter that you personally
15 observed while you were on site?

16 A. No. Our folks had done a good job of
17 documenting. I was there to look at as much as I
18 could in a seven-hour period, but I was certainly not
19 going to refocus. I was getting representative
20 samples of what I was seeing. There's more oxidation
21 on that site, yes -- or more spatter. Excuse me.

22 Q. Have you seen any photographs that were taken
23 by Ms. York or Mr. Nierengarten or Mr. Johnson or
24 Mr. Steinke that depict spatter at Forest Ridge?



1 A. I think there's a few, yeah.

2 Q. Do you recall what materials that spatter
3 appeared on?

4 MS. KAPLAN: Are you referring to just photos
5 taken by others?

6 MR. FORTIN: Yes.

7 THE WITNESS: I think it is, if I recall --
8 and, again, I don't have them in front of me, and it's
9 not a memory test. But if I recall, I think they took
10 photos of the tops of some of the AC units that had
11 some spatter. I may be wrong.

12 BY MR. FORTIN:

13 Q. If you're able to inspect a property say
14 within a week of a hail event of similar magnitude to
15 what you believe occurred at Forest Ridge on August 2,
16 2015, what sort of things would you expect to see that
17 you would not see two years later?

18 MS. KAPLAN: Object to the form of the
19 question. Also, object to foundation. I think the
20 multi-parts of that question, in addition to its
21 hypothetical nature, is inappropriate. You can answer
22 if you understand.

23 THE WITNESS: You and I are going to get
24 along much better today if you try not to ask three



1 questions in one. Maybe break them down a little bit,
2 if you can. I was going to ask you to do that anyway
3 before she objected. So maybe we can break those
4 apart a little bit, if you could, yeah.

5 BY MR. FORTIN:

6 Q. If you're able to inspect a property within a
7 week of a hail event of similar magnitude to what you
8 believe occurred in Forest Ridge in August 2015, are
9 there any things you would expect to see that would be
10 indicative of hail that would not be visible two years
11 later?

12 MS. KAPLAN: Object to the form of the
13 question again. Answer if you can.

14 THE WITNESS: I would not be able to see the
15 granule displacement in the gutters because it
16 typically would have washed out of them by then or
17 been cleaned out. There was some that we documented.
18 But that would be one thing that I would miss.

19 The exposed fiber mat, and you really get to
20 begin to see this when you blow up these photos that
21 I'm talking about, as I did that yesterday with my
22 photos in particular, as that exposed mat ages, it
23 begins to turn brown. And when you look at the ones
24 that I looked at yesterday and I blow them up -- they



1 look white. When you blow them up, you begin to see
2 the subtle brown coming into those, which would be
3 consistent with something that occurred a couple years
4 ago. You wouldn't see that subtle brown two days
5 after the storm.

6 BY MR. FORTIN:

7 Q. What would you see?

8 A. Solid white.

9 So the aging pattern is exemplar of what
10 should be occurring on these roofs right now. Those
11 are the only two things I could think of. You might
12 see more spatter as well.

13 Q. Depending on the season, would you expect to
14 see shredded leaves on trees or flowers and plants?

15 MS. KAPLAN: I'm going to object to the form
16 of the question, also foundation. Are we talking
17 about the Forest Ridge property? Are we talking about
18 any property? What kind of trees? What kind of
19 shrubs? Answer if you understand the question.

20 BY MR. FORTIN:

21 Q. I mean, the types and trees and shrubs out at
22 Forest Ridge.

23 MS. KAPLAN: Object to foundation. We
24 haven't established that he knows what those are.



1 MR. FORTIN: what trees and shrubs are?

2 MS. KAPLAN: I don't know what trees are out
3 there. Do you know the names of the trees and shrubs?

4 MR. FORTIN: No idea.

5 THE WITNESS: Yes, if we were there the day
6 after or two days after. And I've seen plenty of
7 pictures, you know, online that people post. I've
8 seen plenty of situations where the backyard has got,
9 you know, this much hail in the backyard, and then
10 they pan up and all of the leaves are just shattered
11 on the trees.

12 I don't think this storm had that
13 distribution of hail where you had it literally piling
14 up on the ground.

15 BY MR. FORTIN:

16 Q. I just want to make sure we're clear. When
17 you describe seeing, like, videos a moment ago, you're
18 not referring specifically to the August 2015 event in
19 Streamwood, are you?

20 A. No, no, no, no. One of the things you learn
21 as a weather spotter is YouTube can be a wonderful
22 tool. And I'm a bit of a nerd. So sometimes when I'm
23 sitting around and bored, I will pull up, you know,
24 the latest YouTube videos on storms that have occurred



1 just to see what people are seeing out there.

2 Q. As part of your inspection of the roofs at
3 Forest Ridge, did you touch all of the marks that you
4 suspected might be caused by hail?

5 A. Not all of them. I didn't want to disturb
6 every single one of them. So some I touched, some I
7 didn't.

8 what interesting is, you'll be able to see in
9 my photos when you blow them up or I blow them up,
10 you'll be able to tell the ones I touched because
11 there's a distribution of little chalk flecks in there
12 that's coming off my finger.

13 Q. And why do you touch the mark?

14 A. Well, one, you want to feel if there's
15 indentation. You want to feel tactilely if you got
16 that indentation, and that's really the main reason.

17 Q. Are there any other reasons?

18 A. Well, as I said before, if that -- if a
19 bruise has been created by a hail strike and the mat
20 has been fractured in any way even microscopically,
21 then the area around that, you can just touch that.
22 I've gone like this before and had granules come up in
23 my finger. I'm not going like this. I've gone like
24 that. And then you go like this next to it where



1 there's no hit, and you can't move those granules. So
2 that is another thing that you can do. And Haag
3 actually talks about that. They talk about how
4 important it is to tactilely feel these things.

5 Q. Did you measure any of the hail impact marks
6 on the shingles at Forest Ridge?

7 A. No, I didn't. I certainly -- you can see
8 where I've got my finger next to them. I've got my
9 hand next to them. They're all pretty consistent with
10 either side of one inch hail, which is enough to cause
11 damage to this material.

12 Q. And what material specifically is this?

13 A. This would be the asphalt shingles and the
14 siding. And of course, the indentations that on the
15 soft metals as well.

16 Q. The roofs are fiberglass, right, the shingle?

17 A. Fiberglass blend, yes. And it's interesting,
18 because these are a -- there are -- I've actually been
19 to the various plants and seen the shingles
20 manufactured. There are some that have fiberglass at
21 the top. There's some in the middle. There's some on
22 the bottom. We have pictures underneath on the rake
23 edges sticking out where you can see all the
24 fiberglass on these. These are heavily laced



1 fiberglass. There's a lot of fiberglass in these
2 shingles, which...

3 Q. If you turn in Exhibit 251 to page 7. That's
4 the page number in the bottom right corner.

5 A. Yes.

6 Q. You'll see a little table for thresholds for
7 hail caused damage?

8 A. Yes.

9 Q. And it has some measurements to the left, and
10 then to the right it describes some material. There's
11 lightweight composition shingles, heavyweight
12 composition shingles, and wood shingles, and a few
13 more in that list. Would you consider the roofs at
14 Forest Ridge to be either lightweight composition
15 shingles or heavyweight composition shingles?

16 A. They're lightweight. They're not heavyweight
17 at all. There's a 25 year and a 30 years. They are a
18 Class A shingle, and they have a C wind rating on
19 them.

20 Q. What is C wind rating?

21 A. C wind rating would be a 60 mile an hour
22 shingle.

23 Q. How do you determine that?

24 A. Just based on my training, education,



1 experience looking at the shingles, handling them,
2 looking at the seal tabs, lifted up the ones that are
3 debonded, that's what I would rate them at.

4 The point that's important about this
5 one-inch threshold here is, NOAA in their SWDI reports
6 have algorithms. And they will list probabilities,
7 and they will list the -- for example, they may have
8 100 percent probability that hail fell at a site, and
9 then they may have a 60 percent probability that it
10 was severe or 20 percent that it was severe. That
11 severe is inaccessible. That's what they mean.

12 So in this case, if I recall, 100 percent
13 probability, 40 percent severe. So they're saying
14 there's a 40 percent probability that at this site
15 hail larger than one inch, making it severe, fell.
16 That's how that's interpreted.

17 **Q. That's your understanding of the SWDI tool?**

18 **A.** It's not my understanding. That's a fact.
19 That's what it is, so...

20 **MR. FORTIN:** What time is it?

21 **MS. KAPLAN:** It's 12:35-ish.

22 **MR. FORTIN:** Do you want to call it lunch?

23 **MS. KAPLAN:** Yes.

24 (whereupon, a lunch recess



1 was taken, after which the
2 following proceedings were
3 had:)
4 (Whereupon, Exhibit No. 252 was
5 marked for identification.)

6 BY MR. FORTIN:

7 Q. Mr. Irmiter, I'm handing you what I marked as
8 Exhibit 252, which is a document that I was emailed
9 during the course of today's deposition by Ms. Kaplan.
10 Do you recognize this document?

11 A. I do.

12 Q. What do you recognize it to be?

13 A. These are my field notes.

14 Q. And earlier did you also refer to this as you
15 go logbook?

16 A. Yes.

17 Q. And are these all the notes that you took on
18 site at Forest Ridge?

19 A. Yes.

20 Q. And did you take them while you were on site?

21 A. Yes.

22 Q. According to the top half of this page, looks
23 like you have notes from Building No. 2, followed by
24 Building No. 5?



1 A. Yes.

2 Q. Building No. 2, can you just read your notes
3 for Building No. 2 for me?

4 A. Sure. "Front dormer less than 10 square
5 feet, 7 plus. Front left, 10 plus. No siding
6 identifiers. Back, 12 plus."

7 Q. What does no siding identifiers mean?

8 A. Means I peeled back carefully a piece of
9 siding and could not find any manufacturer's mark on
10 the siding where up typically would find it.

11 Q. Did you find weather resistant barrier?

12 A. In my location, yeah, I did.

13 Q. Did you peel back any other siding?

14 A. I don't know. If I did, it would be in my
15 photos or in these notes.

16 Q. So if there's no other indication in these
17 notes or in your photographs that you pulled back any
18 siding, that would mean that you didn't do it other
19 than where it's indicated here?

20 A. Correct.

21 Q. Building No. 5, the last line of notes with
22 respect to that building looks like it says, siding
23 damage?

24 A. Yes.



1 Q. Is there any way for us to tell how much
2 siding damage you saw in Building No. 5?

3 A. No.

4 Q. Would your photographs tell us that?

5 A. It would indicate that I took a picture of
6 siding damage, but I did not quantify it.

7 I will go on record as saying, as I said
8 earlier, there is not a great deal of siding damage on
9 this site. It's hard to find. It doesn't present
10 itself like other projects.

11 Q. What's different about this project?

12 A. Why is that the case? I don't understand the
13 question.

14 Q. Sure. You said it didn't present itself on
15 this project.

16 A. Like similar projects.

17 Q. So what's different about this project?

18 A. I don't know if the siding is more robust. I
19 mean, I'm familiar with the siding. It is a little
20 thicker than some of the vinyl sidings that we see,
21 and so it may have been a little less susceptible.
22 Based on the colors of the siding, it's not a siding
23 that's going to present itself with spatter. Usually
24 when we get into the darker grays, the darker colors,



1 the browns, we can see spatter. This is all very,
2 very light in color. So really couldn't see any
3 spatter, and I don't think anybody did. I didn't see
4 anybody document spatter on the vinyl siding at all.
5 I was able to touch the vinyl siding, and it is
6 chalky. So there is the ability for it to effloresce
7 on there, and that would be a condition where you
8 could see spatter if it were a darker color.

9 Q. Do you have any background that would allow
10 you to say generally how long spatter to vinyl siding
11 will last?

12 A. Just what we learned in our vinyl siding
13 installer training, and what I've read in the Vinyl
14 Siding Institute manuals. And essentially they
15 reference color, and the darker colors being something
16 that would show any type of mark more than the lighter
17 colors. That's all I could reference. I'm not aware
18 of any tests that I have seen. And I feel like I'm
19 anal enough to read everything that's available on
20 various products is what I do. I haven't seen any
21 testing on vinyl for spatter from anybody. It doesn't
22 mean it's not there. I just haven't seen it.

23 Q. Does the fact that you do not reference in
24 Exhibit 252 any siding damage in your notes regarding



1 **Building No. 2, does that indicate that you did not**
2 **observe siding damage at Building No. 2?**

3 A. No, it doesn't indicate that at all. Hannah,
4 I think, and even Johnson or Steinke indicated there
5 was damage in No. 2.

6 **Q. Did you see siding damage to Building No. 2**
7 **or would you not recall?**

8 A. I don't recall seeing it.

9 **Q. After Building No. 5 --**

10 A. If I can go back. Please understand, I
11 cruised around these -- I spent the majority of my
12 probative time on the actual roofs themselves. That's
13 indicated also by my photos. As far as walking around
14 these buildings, I walked them quickly. To do a vinyl
15 inspection, typically what I would have wanted to have
16 with me if I were doing that is about two days, and I
17 would want to have a very, very large light,
18 flashlight, usually a million candle. We have these.
19 And you stand and you shine that up the siding as you
20 walk, and that's when you can really see the
21 identifiers. To my knowledge, I have not seen that
22 anybody has done that on this project on either side.

23 **Q. After Building No. 5, am I correct that we**
24 **see your notes for Buildings No. 49, 48, 46, 27, 30,**



1 and 29 on the first page of Exhibit 252?

2 A. Yes.

3 Q. And on the next page, we see your notes for
4 Building 41?

5 A. Yes.

6 Q. And what does the second line of your notes
7 for Building 41 say?

8 A. "Wind damage as seen from the ground easily."

9 Q. And then you have notes from Building 33?

10 A. Yes.

11 Q. And then what's after 33?

12 A. Building 36. And then -- that is the front,
13 and I did two sample squares on the frontal excavation
14 of Building 36. And then I moved to Building 37. I
15 had misrecorded it as 37.

16 Q. And then is that a Building 35 or a 36?

17 A. It's a 35, yeah. So a total of
18 11 buildings -- 13 buildings.

19 Q. Did you come out with 13? I come out with
20 12.

21 A. 12. You're right. No.

22 MS. KAPLAN: I got 13.

23 THE WITNESS: 13, yeah.
24



1 BY MR. FORTIN:

2 Q. okay.

3 A. 13 buildings, right.

4 Q. Did you say that Mr. Nierengarten and
5 Mr. Johnson would have also created field notes
6 similar to this?

7 A. I thought they did. It appears they didn't.
8 And I think in reading Mr. Johnson's deposition, I
9 recall him saying he did not have field notes.

10 Q. Did you see any hail damage at Forest Ridge
11 that you believe existed prior to August 2, 2015?

12 MS. KAPLAN: Are you referring to just his
13 personal inspection on November 9?

14 BY MR. FORTIN:

15 Q. Thank you for that clarification.

16 At this time, yes, let's just talk about your
17 personal observations while on site.

18 A. Just a second.

19 There are one or two photos that I believe I
20 took where it looked like the exposed mat material had
21 aged to the point where it was not consistent with the
22 2015 storm event, and that was it.

23 Q. Do you recall what buildings those one or two
24 marks were on?



1 A. No, but I would be able to find those in my
2 photo log because I start with the building number and
3 then the next building number. So anything in between
4 the building numbers would be the building I'm on.

5 (Whereupon, Exhibit No. 253 was
6 marked for identification.)

7 BY MR. FORTIN:

8 Q. This would be a good time for me to hand you
9 Exhibit 253. And let me know if you recognize that as
10 your photo log.

11 MS. KAPLAN: When you say "your photo log,"
12 you mean the photos taken by him personally?

13 MR. FORTIN: Yes. Correct.

14 THE WITNESS: Yes.

15 BY MR. FORTIN:

16 Q. And you think that the one or two marks you
17 were just referring to are in your photo log?

18 A. Yes.

19 Q. If you could take a moment, and it looks like
20 you're already doing it, see if you can find those?

21 A. Figure 449, page 225 and 256.

22 Q. So figure 449?

23 A. Yeah.

24 Q. And what about the impact mark on this



1 photograph indicates to you that it predates August 2,
2 2015?

3 A. Well, number one, there's no mat -- I mean,
4 there's no fibers exposed on it, and it's got a
5 brownish -- it's beginning to get a brownish color to
6 it, as opposed to more of the black color that we see
7 in the other photos.

8 And then No. 444, and you can see here where
9 the mat fiber is brown. We're beginning to get that
10 brown tint on a lot of fibers. This, I did not --
11 this was actually in the field of the bad batch of
12 shingles, and the reason I took this close-up is
13 because I believe this bad batch of shingles is at
14 original install. So what I wanted to be able to show
15 the jury was what something that's been exposed for a
16 long period of time looks like, as opposed to
17 something say in figure 445, which is a hail strike,
18 and how those look different.

19 So 445 is consistent with something that is
20 in the time slot of our 2015 storm. 444 is in the
21 time slot of something that's probably been there more
22 than 10 years.

23 Q. Would you say that the mark in 449 is also
24 something that's been there for more than 10 years?



1 A. It's not 2015. It's older than that. I
2 don't think it is as old as 444.

3 Q. And are you able to say that based on the
4 color of it or are there any other factors that lead
5 you to say that it's not as old as 444?

6 A. The impression that it made. It didn't have
7 the depth of any of the other hail marks that I looked
8 at, and it didn't expose the fiber mat. So this is a
9 smaller one inch size hail that hit and removed the
10 granules, but it did not damage the mat.

11 Q. That's 449 you're referring to?

12 A. Yes. That was inconsistent with the other
13 ones that I was seeing. I'll see -- we're still on
14 old ones, right?

15 Q. Yes.

16 MS. KAPLAN: Well, we're on ones that predate
17 August 2nd, 2015, in your opinion.

18 MR. FORTIN: Correct.

19 THE WITNESS: Yes, thank you.

20 416.

21 BY MR. FORTIN:

22 Q. So that's 416?

23 A. Yes. You can see the difference between 416
24 and 415 very clearly in the photo. 415 is a new



1 impact. 416 is an older one. And, again, these older
2 ones, I saw this in a sample square that I would do
3 where I might say there's 16 hits. I might see one of
4 these in that 16 hit area. All right. So I'm not
5 counting it in my 16. So within that sample square,
6 there might be 17 hits. All right. Of the 17, 16 are
7 from the 2015. There is one here that is older. All
8 right. That's why I'm taking a close-up.

9 And, again, I'm thinking at this point in
10 time, if I have to present this to a bunch of people
11 who don't understand what hail is and how we age hail,
12 I have to be able to show them the differences.
13 That's why I'm doing these photos.

14 Q. And the three photos you've identified so far
15 as, in your opinion, depicting hail damage from prior
16 to August 2, 2015, are those all from Building 37?

17 A. Yeah, and that's the other thing that was
18 interesting about that. I did not see that condition
19 on the other side of the complex. And I will tell you
20 that based on my training, education, and experience,
21 and one part of my experience is that my
22 ex-father-in-law, who is a farmer, used to do crop
23 inspections once his crops were in Minnesota. So I
24 had the advantage to go out with him on weekends after



1 hail storms and see the effects of hail on large
2 fields of wheat, soybeans and corn and hay. And it
3 was interesting to see that sometimes there would be a
4 swath right straight line down the middle separating
5 two fields. Sometimes there would be something
6 running this direction, it would stop, and then there
7 would be a circle over here. Sometimes there would be
8 a spot here and a spot here and nothing in between
9 from the same hail storm. In large associations like
10 this, if you take a look at the map of this place, and
11 I've seen this many, many times, it's not unreasonable
12 to see damage on this side of the association and no
13 damage over here depending on what storm and where it
14 passed by and the edge of it. That's what this
15 appears to be on 37. That's why I was interested in
16 it. It's the only building I found it on.

17 Q. So of the roofs that you went on, Building 37
18 was the only one where you found hail that, in your
19 opinion, predated August 2, 2015?

20 A. Yes. And it's also on the edge of the
21 complex. That, to me, explained the reason why.

22 Q. From your review of photographs taken by
23 Ms. York or Mr. Johnson, Mr. Steinke, Mr. Nierengarten
24 at Forest Ridge, do you recall seeing any impact marks



1 in their photos that, in your opinion, predated
2 August 2, 2015?

3 A. No.

4 Q. Were all the roofs the same color?

5 A. No. There's a black and a brown, kind of a
6 tan and a brown. Hannah measured the roofs, so I
7 didn't bother. One of the products was a little
8 thicker. One was a 30 year; the other was a 25 year.
9 This was based on color.

10 Q. Did they appear to you to -- let me try that
11 again. Did the different color shingles appear to you
12 to be of different ages?

13 A. If I recall -- I'll answer it this way. If I
14 recall in looking at the permit records originally,
15 this association, like a lot of these, took a couple
16 years to actually construct. It didn't all go up in
17 one year. So when I saw the two different colors,
18 that didn't concern me. When I saw the measurements
19 of two different colors, I haven't done this
20 correlation yet, but in similar situations, we were
21 able to correlate that back to the staging of
22 construction, Phase 1, Phase 2 kind of a development
23 type thing. So in Phase 1, they use this shingle; in
24 Phase 2 they use this shingle kind of thing.



1 Q. You referenced permit records a moment ago?

2 A. Yes.

3 Q. What specifically are you referring to?

4 A. I just looked at the original construction
5 dates.

6 Q. And where did you find those?

7 A. Online at Streamwood.

8 Q. So through the Village of Streamwood's
9 website you were able to identify the original
10 construction dates?

11 A. Yes.

12 Q. What other data regarding permits were you
13 able to view?

14 A. That was the only one I was interested in. I
15 didn't view any other ones. I was looking at when
16 were these buildings constructed. What I was looking
17 at -- because we'd seen this in so many other
18 associations. Brian Johnson pulls back a piece of
19 siding carefully, sees plywood with no weather
20 resistant barrier. Hannah York pulls back and sees
21 one type of weather resistant barrier. I pull back
22 and see a third type of weather resistant barrier --
23 or a second type of weather resistant barrier. Hannah
24 looks at two different types of shingles, but not just



1 types, but two different thicknesses of shingles.
2 okay. That tells me that these were staged. And so I
3 was just curious to find out, and in reviewing the
4 records, that was verified. I didn't note that in my
5 report. I didn't -- it wasn't probative to my
6 conclusions at that point in time. It was simply an
7 observation as to why -- it was more of a curiosity,
8 why did this occur.

9 Q. You were able to access this information via
10 the village of Streamwood's website?

11 A. It was either via their website or I -- I
12 can't remember if it was via the website or I called.
13 During that call, they pulled it up, and I said when
14 were these constructed. And they showed about a
15 two-year construction sequence, start to finish.

16 Q. Did you obtain any other information in
17 connection with either that phone call or viewing the
18 website, whichever way you were able to access it?

19 A. No.

20 Q. If you'll turn to page 8 of your report.

21 A. Yes.

22 Q. At the top, the second bullet point states:
23 "Non-matching replacement shingles have been used in
24 some areas for temporary repairs." Did I read that



1 correctly?

2 A. Yes.

3 Q. Do you know -- let me take the beginning of
4 that question back. That was the beginning of a bad
5 question.

6 Did you observe either during your time on
7 the site or in reviewing others photographs any
8 non-matching replacement shingles on these roofs?

9 A. Yes. There are a lot, you know, an
10 individual one here and there, and they match in size.
11 They're pretty -- they were a pretty good match, you
12 know, color-wise as well, but I don't know when they
13 were installed. And there's no indication, because
14 there were tarps used that were done by the guy who
15 did the temporary repairs.

16 Q. These isolated non-matching replacement
17 shingles, do you recall whether you saw them
18 personally on site or if it was in someone else's
19 photographs?

20 A. I believe it was others photos. Because I
21 looked when I was out there, and I couldn't find them.

22 Q. Is it your understanding that Forest Ridge or
23 the contractor or whoever did the repair would have
24 been required to obtain a permit to remove and replace



1 **these non-matching shingles?**

2 A. Not in a temporary repair, no, or an
3 emergency repair. Permit is not required for
4 emergency repair.

5 **Q. Do you know whether they were emergency**
6 **repairs or not?**

7 A. Well, usually if somebody is replacing a
8 missing shingle, they're doing that because they're
9 trying to avoid a bigger problem, which would be
10 leaking, and that would typically be recognized -- as
11 a code official, I would recognize that as an
12 emergency repair. Installing a tarp would typically
13 looked at as an emergency repair, yes.

14 **Q. So you don't have any other information such**
15 **as -- I mean, no one told you that those were**
16 **emergency repairs, right; you're just deducing that**
17 **from the fact that it's a single shingle?**

18 A. Yes, exactly.

19 I take it back. Figure 334 shows the
20 different shingles that I saw. I knew I'd seen it
21 before.

22 MS. KAPLAN: For the record, the exhibit he's
23 looking at is Exhibit 253.



1 BY MR. FORTIN:

2 Q. Figure 334, you said?

3 A. Yeah, right below the tarp, you see the brown
4 shingles.

5 Q. Below the tarp and next to that tree?

6 A. Yes. There's about a half a bundle of brown
7 shingles that are laced in there.

8 Q. And based on the picture directly above that,
9 figure 333, would that be Building 41?

10 A. Yes, it is. And the next one, two, three,
11 four pictures are what I spoke of earlier of being
12 able to see the wind damage from the ground if you
13 know what you're looking for.

14 Q. If you'll turn to figure 27 in your photo
15 log.

16 A. Yes.

17 Q. That's a torn cap shingle?

18 A. Figure 27, you say?

19 Q. Yes.

20 A. I went to page 27. Sorry.

21 Yes, that's called Boston ridge. This
22 particular material is integrated to what's called a
23 cobra vent, a ridge vent, so it comes with the
24 materials adhered to it. And this is a corner tear,



1 and then the second corner is torn as well.

2 Q. Do you intend to testify that the tear
3 visible in that photograph was caused by hail or wind?

4 A. It would be consistent with wind folding back
5 a corner.

6 Q. What wind speed would be necessary to cause
7 that type of tear?

8 A. This is a shingle that's rated at 60 miles an
9 hour. You can't look just at wind speed. In my
10 training as a code official where we have to deal with
11 something called ASCE 7, which is the American Society
12 of Civil Engineering 7, which deals with installation
13 of components and cladding. This would be considered
14 a component or cladding, and so it has to be installed
15 sufficient to withstand wind load, which is different
16 than wind speed. Wind load is calculated based on the
17 exposure of the building, how much open terrain there
18 is, and the height of the building. So, for
19 example -- and the meteorologist mentions this and
20 talks about this in his report. The open terrain,
21 wind coming across that open terrain, by the time it
22 hits the peak of this roof, would be a higher wind
23 load here at this location than it would be let's say
24 at the front door or the garage door. All right. So



1 certainly the -- I think it was 69 to 70 mile an hour
2 winds that he finally stuck his pin in in that report
3 would be enough to cause this.

4 Q. who is he?

5 A. Rocco, the meteorologist. I think that's
6 what he finally arrived at, somewhere in that range.

7 Q. The report you're referring to, is it what
8 I'm handing to you now, which is marked as
9 Exhibit 161?

10 A. Yes. He has 57 to 67 mile an hour winds,
11 yeah.

12 Q. When did you first see that report?

13 A. I actually saw it for the first time
14 yesterday in my -- I don't know if I just missed it in
15 the file or what was going on, but I finally read it.

16 Q. Did you communicate directly with Mr. Calaci
17 regarding Forest Ridge?

18 A. No. As soon as our people got back from
19 their inspection and we began to put the report
20 together and the wind damage was documented on site, I
21 looked at the NWSI report for the mesocyclone, and I
22 pulled up the date of loss. And right up to the left
23 of the property, there was a nice bullet or balloon
24 indicating that there was a digital signature of a



1 mesocyclone event at the site on the date of loss.
2 Based on my training with NOAA and sitting in on hours
3 of listening to people like Rocco talk and seeing
4 displays from them, that told me that there was likely
5 a significant wind. And so I then reached out to
6 counsel and said I think we should bring a
7 meteorologist into this to verify that.

8 Now, what's interesting about that is, when I
9 see this report last night, he pulls up exactly the
10 same data that I pulled up right there.

11 Q. And what page of Exhibit 161 are you looking
12 at right now?

13 A. Page 6. And he indicates the storm basically
14 came from the midway Chicago area and across. And
15 there's an echo signature pattern consistent with
16 tornadic activity. That's how he assessed his wind
17 damage.

18 And please understand, when I saw that, okay,
19 what I can't do is, I can't look at that on page 6 and
20 I can't tell you what the wind speed is right there.
21 I can tell you that NOAA is just saying there's a
22 pretty significant wind event right here. It would
23 take his expertise to nail that down, which is what
24 he's done. I can then look at that and tell you,



1 based on this style of shingle and the typical wind
2 rating for these shingles, that would be enough to
3 cause the damage I saw.

4 Q. Am I correct that you do not intend to offer
5 expert testimony as to the meteorologic conditions at
6 Forest Ridge on August 2, 2015?

7 MS. KAPLAN: He's not going to offer forensic
8 meteorologic opinions. He will testify to the data
9 that he pulled, which is reflected in his report, and
10 that the data he's reviewed is consistent with the
11 damage that he saw. But Mr. Calaci has been disclosed
12 and will testify to those forensic meteorology
13 opinions.

14 MR. FORTIN: Thank you that testimony,
15 Ms. Kaplan.

16 BY MR. FORTIN:

17 Q. If you'll turn to figure 45 in your photo
18 log.

19 A. Yes.

20 Q. And actually, before I ask you that question,
21 can you tell me when did you first become aware of
22 Mr. Calaci's expert opinions in this matter?

23 A. Yesterday. I mean, I knew he had been
24 retained. I just hadn't seen his report.



1 Q. So prior to yesterday, you did not know what
2 conclusions he had reached regarding the size of any
3 hail or the speed of any wind?

4 A. No. But it sure made me feel pretty good
5 when I read it.

6 Q. Figure 45 in your photo log.

7 A. Yes.

8 Q. Is that depicting a hail impact mark?

9 A. Yes, it is.

10 Q. The gap between those two shingles, do we
11 know what that measures?

12 A. That gap is the drain track for the three-tab
13 shingle. It's three-eighths of an inch.

14 Q. With that as a control, can you venture an
15 opinion as to the diameter of the impact mark we see
16 in figure 45?

17 A. Inch and a quarter to inch and three-eighths.

18 Q. And would that correspond to the diameter of
19 the hail that caused it?

20 A. Typically, yes.

21 What's more important about this photo, and
22 it doesn't show up here in this because of the
23 reproduction of this, but when you take that raw photo
24 right there and you blow it up, you can actually see



1 the fracture on the shingle below, which indicates to
2 me that we had some spiky hail, as we call it. Hail
3 that has shards on it.

4 Q. Was the size of that impact mark generally
5 consistent with the other impact marks you saw at the
6 property?

7 A. Yes. They range from three-quarters of an
8 inch to about an inch and a quarter. Didn't really
9 see a lot of two inch, larger than that. This was
10 about average.

11 Q. Turn the page to figure 47.

12 A. Yes.

13 Q. Is that, in your opinion, a hail impact mark?

14 A. Yes. It's on the ridge. When you blow it up
15 and you look at it, it's not bird damage, which is
16 what some people will call that signature pattern.

17 Q. Why would some people call that bird damage?

18 A. Because that's what some people call it. I
19 don't know what else to tell you.

20 I don't think in this signature that was bird
21 damage. I saw no evidence of bird residue on any of
22 these roofs.

23 Q. Not to be obtuse, so when you say "bird
24 damage," would that mean someone saying it's damage



1 caused by a bird?

2 A. Yes. Sorry.

3 Q. That's okay.

4 A. There is literature that supports, and I
5 would agree with it, that there is a certain species
6 of bird that when it defecates on a roof like this, it
7 will leave a half circular mark like that. We
8 typically see that in Texas. We don't typically see
9 that in Illinois.

10 Q. So that could theoretically be a bird poop
11 mark?

12 A. Well, somebody might call it that. I don't
13 think it is. That's why I counted it as hail.

14 Q. The caption to figure 47 just has the figure
15 number and your initials, whereas some of the other
16 hail impact marks say impact damage. Does that
17 signify anything at all?

18 A. Yeah, boredom with labeling all of these
19 photos.

20 Q. Does figure 48, is that a photo that's
21 intended to depict the depth of the impact mark you
22 see in figure 47?

23 A. Yes. You don't get that depth with the bird
24 damage.



1 Q. That would be some serious bird feces.

2 A. Heavy, heavy bird feces, yeah, that's the
3 problem. So that's why I took the side shot.

4 Q. Turn to figure 99. That's the start of a
5 series of photos that, according to your captions,
6 depict some spatter on a stone sill cap?

7 A. Yes.

8 Q. And is this on Building 5?

9 A. Yes.

10 Q. Is it your opinion that these marks that
11 you're calling spatter are evidence of hail that
12 struck this stone sill cap on August 2, 2015?

13 A. Some of it did, yes. I think there's some
14 older stuff on there, as well, that's filling it.
15 This to me was -- the reason I found this probative
16 was I think it's consistent with the weather analysis
17 I had done at that time with the other observations I
18 was seeing, and also to explain to a jury that not one
19 size falls. If you see on the top photo, I have a
20 number of different sizes, a lot of them being around
21 one inch, but there are some smaller ones, as well,
22 and a couple that might be a little bit larger.
23 That's what I was trying to depict here.

24 Q. So in figure 99, you're saying that there's



1 different size hail -- there's different size -- let
2 me try it again. There's spatter indicative of
3 different size hail?

4 A. Yes, from the same event.

5 Q. Is there also spatter indicative of hail from
6 an earlier event?

7 A. Yes, I think there is.

8 Q. And what generally is the size of the hail
9 that caused that spatter?

10 A. Smaller, pea size.

11 Q. And pea size correlates to?

12 A. Eighth inch. Not enough to cause physical
13 damage to any of the building products that are out
14 here.

15 Q. Did you observe anything based on -- that's
16 another bad question.

17 Figure 101, that's what you call one and a
18 quarter inch spatter?

19 A. Yes.

20 Q. So would that correspond to one and a quarter
21 inch hail?

22 A. Yes.

23 Q. Is it your opinion that that was hail from
24 August 2, 2015?



1 A. Yes.

2 Q. If you'll turn to figure 127.

3 A. Yes.

4 Q. That is what you're calling siding damage?

5 A. Yes. And that is something that -- if you
6 will, just a second, because I remember when this
7 occurred.

8 So if you take a look at -- figure 121 is a
9 downspout at the back of the building. Figure 124 is
10 a downspout at the front of the building. So both of
11 these downspouts have been hit. At that point I'm
12 coming from the deck area in back, because I've taken
13 pictures of the deck right before that. I'm coming
14 around the corner. I'm looking at that downspout. So
15 the downspout that's in figure 126 right in the corner
16 there, you can see it behind the tree. You can see
17 the other downspout at the top of that picture. I'm
18 walking around. I look at the first downspout. I
19 look at the siding. I look at the second downspout.
20 And it's when I look back -- I've already passed the
21 siding. It's when I look back and the sun hits the
22 siding just right, that I see this. Otherwise, I
23 would have never noticed it.

24 Q. Sounds like a magical moment.



1 A. It is. It's one of those great forensic
2 moments that you have once in a while. Lighting plays
3 a very important part in seeing some of the damage.

4 Q. And what building is this?

5 A. This is No. 5.

6 Q. If you'll turn to figure 157.

7 A. Okay.

8 Q. What are we looking at there?

9 A. That's a patch that was put on. I'm just
10 indicating that somebody was up on that roof with some
11 tar at some point in time.

12 Q. And you don't know when or why that was done,
13 right?

14 A. No. But if you take a look at how white it
15 is, that's what happens -- one of the reasons I took
16 this is, again, to help a jury understand what happens
17 to the mat material when it is exposed for a while to
18 the sun. And a while, I mean two, three, four, five
19 six years down the road it begins to turn color and
20 starts to whiten out. So if I have a storm that
21 happened in 2010 and the hail that I'm looking at, the
22 damage I'm seeing is from 2010, the whiter part of
23 this material is what all the mat should look like.
24 And I found, as I indicated already, maybe two places



1 on 37 where that occurred.

2 Q. If you'll turn to figure 171. Are you of the
3 opinion that that figure is depicting a hail impact
4 mark?

5 A. Yes, especially when you blow it up.

6 Q. What about that is indicative to you of hail?

7 A. It's in the literature with Haag, the crow's
8 foot that's created right here.

9 Q. When you say "the literature with Haag," can
10 you be more specific?

11 A. Well, in Haag literature, one of the things
12 that they point to, and I think it's also in the
13 Koontz-Crenshaw literature, not the one on metal, but
14 the one that they did on shingles. And one of the
15 signifiers that we look at is what we call a crow's
16 foot impression that can be left, and that's what that
17 looks like. So when this is blown up, you actually
18 will see the fracture at the larger half circle that
19 is through the mat.

20 Q. And if you'll turn to figure 294.

21 A. Yes.

22 Q. What are you photographing?

23 A. This was the only building I saw this on, and
24 this, at that point of my inspection, would be



1 contrary to what the city of Streamwood would allow.
2 So I was taking a photo to show -- I don't know when
3 this was done, but somebody's attempt at matching
4 siding.

5 Q. So are you of the opinion that figure 294
6 shows mismatched siding?

7 A. I'm not of the opinion. It does. It's a
8 fact.

9 Q. And do you see multiple areas of mismatched
10 siding?

11 A. Yes, that would be consistent with wind
12 damage that occurred at some point in time and blew
13 some siding off and damaged it. So this would be most
14 likely what was commercially available at the time to
15 do the repair, but I can't tell you when that was
16 done. I took this as an example to show the jury what
17 the city of Streamwood would not allow.

18 Q. Do you know whether Forest Ridge obtained a
19 permit for that repair?

20 A. I don't know if they did, but I can almost
21 guarantee you they didn't.

22 Q. That extent of repair, am I correct that that
23 would require a permit in your opinion?

24 A. In the city of Streamwood, yes, because of



1 the matching issue.

2 Q. But you expect Forest Ridge to comply with
3 the Village of Streamwood Building Code?

4 MS. KAPLAN: Objection to form, foundation,
5 calls for speculation. He's not testifying on behalf
6 of the community. He's here as an expert.

7 THE WITNESS: I'll answer the question the
8 following way: The only way the Building Code
9 official can enforce the code is if they're aware of
10 the work being done.

11 BY MR. FORTIN:

12 Q. Does figure 293 show the faraway vantage
13 point of the elevation that you're showing closer up
14 in 294?

15 A. Yes, I saw that, and then what I did is
16 rather than -- because I was going the other direction
17 with the boom. So as I'm turning the boom and getting
18 ready to go down, I look back and see this. So then
19 figure 294 is with my zoom lens.

20 Q. Is that Building 27 that's depicted in figure
21 293 and 294?

22 A. I don't know, but it certainly could be.

23 Q. Do you know what building you were on when
24 you took this picture?



1 A. I'm sure I can figure that out.

2 I was on Building 30. Looks like 27, yes.

3 Q. Thank you.

4 Figure 326, can you tell me what you're
5 depicting in that photo?

6 A. Yes. One of the things that happens when --
7 again, one of those wonderful forensic moments in the
8 field. When the sun hits the shingles just correctly
9 and you have the right angle, the hail damage will
10 shine. So I could effectively take an arrow right now
11 and I could do -- recognizing that each one of these
12 is 12 inches --

13 Q. When you say "these?"

14 A. Shingle tab. So the width of the shingle tab
15 is 12 inches. The exposure is for rough estimate
16 6 inches. I could effectively count out right here a
17 test square or sample square, and in that sample
18 square, I could tell that you there are 19 hail hits.

19 Q. Are you taking that photograph from a
20 different building's roof?

21 A. Yes, from across the way. But, again, I was
22 just at the right angle to see that at the time and
23 capture it with a photo.

24 Q. And if you turn to figure 315, it looks like



1 you were on Building 24?

2 A. 29.

3 Q. So figure 236, that photograph would have
4 been taken from your vantage point at Building 29?

5 A. Yes.

6 I didn't count this roof in my number of
7 roofs that I inspected. I suppose I should say now I
8 inspected 14 roofs.

9 Q. Figure 142.

10 A. Yes.

11 Q. What are you depicting in that photograph?

12 A. Missing shingles.

13 Q. You attribute those missing shingles to?

14 A. Wind damage.

15 Q. On any particular date?

16 A. Didn't get up to look at it to see how --
17 what the exposed shingle looks like. It was
18 consistent with other areas where shingles had been
19 missing or covered over as a result of wind from the
20 date of loss.

21 Q. And when you say "covered over," would that
22 have been in with a tarp?

23 A. Yes, like in figure 34.

24 Q. What leads you to believe that -- let me take



1 that back.

2 Do you have any information as to when or why
3 the tarps were installed?

4 A. It's my understanding that -- again, you can
5 help me with his name. I think it's Hawkins.

6 Q. Hankins.

7 A. Hankins. Mr. Hankins will testify that he
8 put those tarps in or those tarps were put in his firm
9 after the storm event.

10 Q. What's the basis for that understanding?

11 A. I can't remember if that was in Ryan's or
12 Brian's deposition or where that's coming from, but
13 that's my understanding that these tarps were put on
14 by them.

15 Q. So you think you got that information from
16 either Ryan's or Brian's deposition?

17 MS. KAPLAN: Objection, mischaracterizes his
18 testimony. He said he couldn't remember where it came
19 from.

20 THE WITNESS: It could have come from them.
21 I'm not sure where it came from. I know that no one
22 at FBS put those on, those tarps.

23 BY MR. FORTIN:

24 Q. And you never spoke with anyone -- you never



1 spoke with Mr. Hankins, right?

2 A. Correct.

3 Q. Do you know if anyone else at FBS spoke with
4 Mr. Hankins?

5 A. No, I don't.

6 Q. And figure 408.

7 A. Yes.

8 Q. That's showing granular accumulation in a
9 gutter?

10 A. Yes.

11 Q. Why did you take that photo?

12 A. It shows that we have a substantial amount of
13 granular loss on this particular roof in the gutters
14 in figure 408 and further down the gutter in 409.

15 Q. So what does that mean?

16 A. It could be consistent with damage caused by
17 hail.

18 Q. The fact that the granulars are still in the
19 gutter, does that tell you anything as to when the
20 hail that caused that granular loss may have occurred?

21 A. It depends on how much mud and pollution is
22 in there. I've seen granules from a date of loss stay
23 in a gutter for three, four years, start growing
24 things out of them. I've seen it washed out the next



1 day. It really depends how clean the gutter was to
2 begin with. If there was a layer of dirt and it's
3 wet, then that stuff's going to turn almost rock hard,
4 and it's not going to wash out unless you take a tool
5 to actually break it up to get it out of there.

6 Q. Did you see anything growing in this gutter?

7 A. I did not.

8 Q. And you don't have any information as to how
9 clean or not clean this gutter was prior August 2,
10 2015, right?

11 A. No.

12 Q. By saying no, would that mean that you do not
13 have any information?

14 A. I do not.

15 Q. Let's turn to your report, Exhibit 160. Was
16 this particular report created from a template or a
17 prior report?

18 MS. KAPLAN: Just going to object to the form
19 of the question to the extent that I think that term
20 "created" is ambiguous, and someone could interpret
21 that in many ways.

22 BY MR. FORTIN:

23 Q. I mean it in the sense of conjuring into
24 being.



1 MS. KAPLAN: I don't know what that means.

2 THE WITNESS: Can we say generated?

3 BY MR. FORTIN:

4 Q. Sure. Yes.

5 A. We have a report generator, okay, that we
6 have created. And the report generator does not
7 everything we would like it to do, but it does certain
8 things. So, for example, when the report -- when
9 information is dropped into the report generator, and
10 you note that -- I'll give you an example. In section
11 2.0, Inspection Notes, page 7 of 56, the third bullet
12 point down, Roofing Type, one layer of three-tab strip
13 self-sealing shingles, the report generator, when you
14 enter that, automatically goes back in section 1.7 and
15 drops in certain documents that we would reference
16 with regard to that particular material. If we had
17 typed in Moneir (phonetic) half-round cement tile, you
18 would have a completely different list of documents in
19 here, because it's a different product. So it is a
20 generator that we use to set up, if you will, the
21 template for this individual report utilizing our
22 database of information.

23 So all of the information that is in the
24 inspection notes and the site observations, which is



1 section 2.0 and 3.0, is all hand entered manually off
2 of field notes. Everything that is -- that's a lot of
3 the documents, quite frankly.

4 4.0, it would say causation statement, and it
5 would drop a causation statement in there that would
6 have nothing to do with this project, other than the
7 fact that based upon physical evidence collected from
8 the site inspection and roof assessment, period, and
9 then I would go in and edit that based on what we saw.

10 The Village of Streamwood requirements in 5.0
11 would all have to be hand entered.

12 Q. Let me stop you there. 4.9, the causation
13 statement?

14 A. Yes.

15 Q. Is the content of that section then something
16 that you entered?

17 A. Yes.

18 5.0, that would have gone in initially
19 because, as I'd indicated, we had already done a
20 Streamwood project a few years before, so we would
21 have gone back into that. We would have literally
22 just paste and cut this in from the other document.
23 But then based on looking at the new documents, going
24 and make edits specific to this particular matter.



1 6.0 would be completely new, because that
2 would be an evaluation of what roof consultants said
3 on this report, a brief comment.

4 And then 7.0 would be all new, as well.

5 And 8.0 would all be new.

6 Q. This report generator, is that a special
7 software or is this an elaborate use of macros and
8 autotext in Microsoft word?

9 A. No. We hired a -- it's a proprietary
10 software that we developed with a programmer out of
11 South Africa of all places.

12 Q. Let's go to section 1.1.

13 A. Yes.

14 Q. There's an excerpt from the roofing
15 consultants report, and that would be the roofing
16 consultants report that's referenced in section 1.6 as
17 being dated October 17th, 2016, right?

18 A. Yes.

19 Q. Then section 1.2 has -- it's a CoCoRaHS
20 report from the NOAA storm event database?

21 A. That was another reason -- if I can add, that
22 another reason I wanted to retain -- or wanted counsel
23 to retain a meteorologist. This particular report had
24 a different time of day that they were reporting.



1 This is not the first time we've seen that CoCoRaHS.
2 I had a case out in Colorado where they had the storm
3 at noon, and everybody else had the storm at 3 o'clock
4 in the afternoon. It caused a big flub in that case
5 or a big question mark on everybody's part. So I
6 basically don't necessarily rely as heavily on
7 CoCoRaHS particularly when I'm getting different
8 information on the other NOAA data. And a
9 meteorologist vetted that out for us an evening storm.

10 Q. And section 1.3 is the Severe Weather Data
11 Inventory, what we've been calling SWDI tool, the
12 filtered hail signatures product for 2015?

13 A. Yes.

14 Q. Those three sections we've just leafed
15 through, 1.1, 1.2, and 1.3, is that the only weather
16 data that's specifically identified in the report?

17 A. That's all that's identified in the report,
18 yes.

19 Q. Section 1.1, that obviously comes from the
20 roofing consultants report. As for section 1.2, do
21 you know who obtained this observation from the storm
22 events database?

23 A. That typically would have been Ryan that
24 inserted that.



1 Q. It was not you?

2 A. No.

3 Q. And the filtered hail signatures from the
4 SWDI in section 1.3, do you know who obtained that?

5 A. That probably would have been put in by Ryan.
6 And understand that what would happen when this report
7 came to me, and I testified to this earlier, all of
8 this would have been in yellow.

9 Q. It all would have been in yellow?

10 A. In yellow. Indicating that I didn't look at
11 it; I didn't insert it; but I need to look at it and
12 do my own research on it, which I did.

13 Q. What --

14 A. Before I approve this and left it in.

15 Q. So what research did you do?

16 A. Well, I pulled up the same address, the 2015,
17 and I pulled up the same signature -- same report that
18 the meteorologist pulled up showing the mesocyclone
19 signature. He shows the overall storm pattern.

20 There's another one where you can just tap on
21 the indication of a mesocyclone. And what happens in
22 that report is all you have is this bullet right here.
23 There's nothing else on there, just this one bullet.

24 Q. What bullet are you referring to right now?



1 A. I'm referring to -- in our report,
2 Exhibit 160, section 1.3, I'm referring to the green
3 bullet.

4 Q. And the green bullet is the one that's to the
5 left of the property?

6 A. Yes.

7 MS. KAPLAN: That has the comment box
8 attached to it?

9 THE WITNESS: Yes. And showing 100 percent
10 hail, 40 percent probability of max size, severe hail.

11 When you filter through this database, there
12 are five products that you can look at.

13 BY MR. FORTIN:

14 Q. And just to be clear, the database you're
15 referring to is the SWDI?

16 A. Correct. So right above there, there is a
17 box that says, filtered hail signature, max size,
18 probability from NEXRAD Level III hail product.
19 There's a little arrow there. You can hit that arrow,
20 and you can have five different products to look at.

21 One of those products is just overall storms.
22 That's what the meteorologist has. He's got bullet
23 point No. 1.

24 Four bullet points down from there, there's



1 one that's called mesocyclone. When you do the
2 mesocyclone, this is the only icon that shows up at
3 this exact same location. That's what I saw. That's
4 why I wanted to get the meteorologist involved,
5 because that indicated to me that there was high wind.

6 Q. What, if any, other research into the weather
7 data did you personally do?

8 A. Other than my own individual and then the
9 teams ground truth investigation.

10 Q. Well, when you just said now your own
11 individual, are you referring to what you had just
12 described as pulling up the SWDI, what's shown in 1.3
13 here, and then looking at the mesocyclone tool?

14 A. Yes. And the ground truth investigation, the
15 actually going on the site to look for hail damage and
16 document hail damage. That was the extent of what I
17 did.

18 Q. Do you consider that weather research into
19 weather data?

20 A. Oh, sure. Absolutely. I learned this a long
21 time ago. When we did -- for example, when we did the
22 McAllen storm in 2010, McAllen, Texas, a monumental
23 storm, we were getting reports of three inch hail in
24 far Texas. We'd do an entire neighborhood of 70



1 houses, and there wouldn't be one blemish of hail
2 anywhere. And then we'd go to Edinburg where they
3 said there was one inch hail, and this is NOAA saying
4 this, and there would be three inch holes in the roof
5 from the hail.

6 So the ground truth investigation has to be
7 part of the weather analysis to get to causation. You
8 can't do one without the other. They're intertwined.
9 We do ours first so we have some idea of what kind of
10 signature patterns we might be looking at out there.

11 That's why I eliminated the 2010 storm from
12 this site completely, because the signature pattern on
13 the 2010 is two and a half inch hail. If I had two
14 and a half inch hail in 2010 on these roofs, there
15 would be nothing left of them.

16 Q. What is the signature pattern of the August
17 2015 storm?

18 A. One inch to one and a quarter inch hail, very
19 hard hail, very dense hail, hail that fractured the
20 mat, hail that exposed mat fibers, hail that actually
21 punctured through some of the shingles.

22 Q. And that's based on what you're calling the
23 ground truth investigation?

24 A. Yes.



1 Q. And then what does the NOAA SWDI add to that?

2 A. It tells me that there's a 40 percent
3 probability of hail at the site or very near the site.
4 It tells me that with the mesocyclone signature
5 pattern that I saw and my familiarity with having
6 listened to meteorologists talk about what happens
7 with that signature is that there is a cone that they
8 discuss, and that cone will extend down to the ground
9 as much as five miles. And in that zone or that cone
10 area is where you could have your damage. So within
11 the signature of this mark on section 1.3, which is
12 right next to the site of one inch hail, within a five
13 mile area of that with the mesocyclone signature, I
14 could have hail in excess of one inch, which is
15 labeled as severe by NOAA and which, according to the
16 literature, is enough to cause damage consistent with
17 what I saw.

18 Q. The information in the comment balloon, I
19 guess, Ms. Kaplan coined the phrase so artfully
20 earlier.

21 MS. KAPLAN: I don't know if that's a
22 technical term.

23 MR. FORTIN: That's what we call them,
24 balloons. It's yours now.



1 BY MR. FORTIN:

2 Q. I just want to make sure we're on the same
3 page as far as what you understand that to mean. The
4 date and time, since this is presented in universal
5 time, UTC, the timestamp that's there would actually
6 correspond to, I think, 10:00?

7 A. Yeah, after 10 o'clock.

8 Q. After 10 o'clock on August 2, correct?

9 A. Yeah.

10 Q. And KMKX, do you know what that means?

11 A. Yeah, that's the closest reporting station.

12 Q. Closest reporting what station?

13 A. No, I don't know what KMKX -- I'm sorry. I
14 don't know what that means.

15 Q. Do you know if KMKX is the closest NEXRAD
16 radar station to Forest Ridge?

17 A. Or the closest data point is what it might
18 be.

19 Q. First question is, do you know if it's the
20 closest NEXRAD station to Forest Ridge?

21 A. I do not know if it is.

22 Q. Do you know where KMKX is located?

23 A. I do not. Well, it's at that spot. That's
24 how I read that. That spot is KMKX.



1 Q. That's your understanding of what this data
2 presents?

3 A. Yes.

4 Q. And then to the right of that, it says, prob,
5 which means probability, and 100/40?

6 A. Yes.

7 Q. So what do you understand that 100 to mean?

8 A. 100 percent probability of hail at that spot
9 on that date at that time. 40 percent probability
10 that it was severe.

11 Q. Severe being one inch?

12 A. One inch or more.

13 Q. And the 100 percent probability of hail, what
14 size threshold do you understand that to mean?

15 A. That can be from pea size all the way up
16 to -- that can be any hail, any hail on their
17 spectrum.

18 Q. Do you know what the bottom of that spectrum
19 is?

20 A. Pea, pea size, yes.

21 Q. And your understanding of the diameter of the
22 pea is what again?

23 A. Eighth inch. Not enough to cause damage.

24 Q. Did you -- let me try that again.



1 A few moments ago you referred to ruling out
2 the 2010 storm, right?

3 A. Yes, absolutely.

4 Q. You mentioned that that one had a different
5 signature pattern?

6 A. Yes.

7 Q. And what was that signature pattern?

8 A. 2.5 to 2.75 inch hail.

9 Q. And where does that data point come from?

10 A. The same site. All you do is you go to -- on
11 1.3 of this chart that's on here, in the left-hand
12 corner where it says, select year, instead hitting
13 2015, you hit 2010. All right. And then you'll have
14 a whole list of dates, and then you can go back to
15 those individual dates.

16 what's important to recognize on this
17 particular filter is we're using the filtered hail
18 signature for 2015. When you do the all hail
19 signature -- and the filtered signature shows
20 April 9th, June 8th, August 3rd, June 21st, and
21 June 17th. When you hit the unfiltered, this entire
22 left-hand column is filled with dates. And when you
23 go -- when you see the August 3rd date, which is our
24 storm date, I think it's like 56 entries, those are



1 all hails that are less than an inch.

2 So this can be misleading in that you think,
3 oh, there's only one balloon here near the site so
4 that's the only hail that fell right at that spot.
5 When you look at that other map, this thing is filled
6 with balloons indicating that there was a lot of hail
7 going through there of various sizes.

8 Q. And did you pull up the 2010 storm with that
9 filtered hail signatures tool in connection with this
10 Forest Ridge project; or did you do that during that
11 Southgate matter, and you just remember what the data
12 was?

13 A. I had remembered what Southgate was. As part
14 of this, I went back to check the Southgate data. And
15 then while I was there, I went ahead and just shifted
16 in this address just to see what it would pull up.

17 Q. I'm going to hand you what was previously
18 marked as Exhibit 211 B. Let me know if you recognize
19 this as the SWDI filtered hail signatures for --

20 A. Yes.

21 Q. -- the same Forest Ridge address as used in
22 section 1.3 of your report.

23 A. Yes.

24 MS. KAPLAN: I'm sorry. Could you read back



1 that question one more time?

2 (Whereupon, the record

3 was read as follows:

4 Q. I'm going to hand you what
5 was previously marked as Exhibit
6 211 B. Let me know if you
7 recognize this as the SWDI
8 filtered hail signatures for --

9 A. Yes.

10 Q -- the same Forest Ridge
11 address as used in section 1.3
12 of your report.

13 A. Yes.)

14 THE WITNESS: I want to amend that answer.

15 This is a severe weather data inventory that is an
16 exemplar of what we have in our report, but it is for
17 a different date. This is for the 2010 year.

18 BY MR. FORTIN:

19 Q. Right.

20 MS. KAPLAN: So what deposition was that
21 from, do you know?

22 MR. FORTIN: This was I believe
23 Brian Johnson's deposition.



1 BY MR. FORTIN:

2 Q. On the first page of 211 B, do you see --
3 this is when you find out that I'm red-green
4 colorblind. One of the balloons there is a different
5 color than the rest, right?

6 A. Yes.

7 Q. What color is the balloon that's a different
8 color than the others?

9 A. That is the -- it's the one to the right next
10 to the 19. It's the top one.

11 Q. Could you just tell me what color it is?

12 A. It's green.

13 Q. Thank you. And other ones are red?

14 A. Yes.

15 Q. So the green balloon, that correspondences to
16 the shaded row --

17 A. Yes.

18 Q. -- at the bottom?

19 In the max size column, we see 2.5?

20 A. Yes.

21 Q. Is that the -- or one of the bookends of the
22 2.5 to 2.75 range you had mentioned earlier as being
23 part of the signature for that April 2010 storm?

24 A. Yes. This is the same exact database I was



1 just talking about. I pulled up this exact same thing
2 and looked at it. I've already analyzed this, yeah.
3 Absolutely.

4 Q. And based on the size given for the April
5 2010 storm, the 2.5 to 2.75, that allowed you to rule
6 out that April 2010 storm as causing the damage that
7 you observed during the ground truth investigation at
8 Forest Ridge?

9 MS. KAPLAN: Object to the form of the
10 question.

11 THE WITNESS: Yes. And I will answer that by
12 saying, if you take a look at Exhibit 251, which you
13 so nicely put in front of me before, and you go to
14 page 7 and you look at the bottom left-hand corner,
15 that's what 2.75 inch and 2.5 inch hail looks like.

16 BY MR. FORTIN:

17 Q. So that's Exhibit 251, page 7, bottom
18 left-hand corner?

19 A. Yes. That is what large hail looks like.
20 That showed up nowhere on this site.

21 Q. Did you download any of the SWDI data that
22 you looked at in connection with this Forest Ridge
23 matter or did you just view it through the SWDI
24 website?



1 A. I just viewed it through the SWDI website,
2 yeah.

3 Q. And that, I take it, would explain why it
4 wasn't included as part of FBS's report -- I'm sorry,
5 as part of FBS's file that was produced?

6 A. Correct. And, again, please understand that
7 there are plenty of times when we have been given a
8 storm date, particularly as I said earlier in Texas,
9 where we're given a storm date, and they're telling us
10 it's, you know, inch and a quarter hail, and we get
11 out -- and we pull the weather report. We get out
12 there, and we literally see a roof that looks like
13 page 7 of this Haag manual. And we're going what the
14 heck. So then we go back and we start looking, we go,
15 man, this is three years old. This is the storm that
16 caused this.

17 So, again, that just didn't ring true here.

18 Is this is a good breaking point for a
19 bathroom break?

20 MR. FORTIN: Yeah, we can take five minutes.

21 (Whereupon, a short break
22 was taken, after which the
23 following proceedings were
24 had:)



1 BY MR. FORTIN:

2 Q. You know what an ITEL report is, Mr. Irmiter?

3 A. Yes.

4 Q. Have you obtain an ITEL report for any siding
5 or shingles at Forest Ridge?

6 A. No.

7 Q. Has anyone at FBS?

8 A. No.

9 Q. Have you applied for a permit for replacement
10 of any roof or siding at Forest Ridge?

11 A. No.

12 Q. Has anyone at FBS?

13 A. No. Let me add, nor would we.

14 Q. Why is that?

15 A. We're not contractors.

16 Q. If you'll turn to page 50 of your report.

17 A. Yes.

18 Q. Section 7.1.2, it states that proper repair
19 of the existing shingle requires a manufacturer's ESR
20 and an approval of the repair from the building
21 official. What's an ESR?

22 A. The International Code Council publishes
23 evaluation services reports for virtually every
24 product that is used in the field of construction. As



1 a code official, you utilize these as a condensed
2 version or a CliffsNotes, if you will, type of report
3 on all of the specifications of the product, including
4 how it has to be installed per manufacture's published
5 constructions, which is what the Code says. So rather
6 than having to call up the manufacturer and get these
7 huge technical treatises, you get a condensed version
8 of the highlights.

9 Q. Were you or was FBS able to determine the
10 manufacturer of the shingles at Forest Ridge?

11 A. No.

12 Q. If you didn't know who the manufacturer is,
13 how can you obtain the manufacturer's ESR to comply
14 with what you're seeing there in 7.1.2?

15 A. You can't, and so therefore, you can't repair
16 them, because the repair has to be under the direction
17 of the manufacturer according to the code. So if you
18 don't note the manufacturer, then you don't know how
19 to repair it.

20 Q. And therefore?

21 A. Replace.

22 Q. Replace what?

23 A. The entire roof.

24 Q. On that building?



1 A. Yes.

2 Q. Section 7.1.4 refers to damage to roof
3 penetrations?

4 A. Yes.

5 Q. And then it has a parenthetical, and then it
6 says, removal and replacement, and then it goes on. Is
7 there a word missing somewhere there?

8 A. Yeah, there is. It's poorly written.

9 The intent is that when you are replacing a
10 vent or an appenditure that comes through the roof
11 like a pipe cap or something like that that's been
12 physically damaged or that quite frankly is used now,
13 it's used material, you have to take shingles off
14 around it. You can't just take it off. So usually,
15 for example, when you replace a roof vent, a turtle
16 vent, typically you're including five to seven
17 shingles depending on how the vent is installed,
18 replacing along with the vent. That's all that this
19 means. There's additional work involved.

20 Q. Did FBS observe any damage to the roof
21 penetrations from hail or wind?

22 A. No. There are no roof penetrations that
23 really come into play here. So, again, some of --
24 that's probably a boiler point that came through.



1 Q. Are there any other sections in 7.0 that you
2 would also call a boilerplate that's not necessarily
3 applicable to this matter?

4 A. No. And I don't want to make it sound like
5 it's boilerplate. There's two reasons that these roof
6 penetrations are going to be replaced. One is that
7 they're either physically damaged, okay, or you're
8 going to replace them because they're old and used
9 and in the process of removing them, you will
10 physically damage them. So what we're saying is, and
11 this is reflected in our estimate, if there is a roof
12 penetration -- and I'll give you example here in the
13 photos.

14 Figure 149, these are roof penetrations.
15 There is a saddle that goes around those that's
16 integrated into the shingles with adhesive. That
17 saddle is going to be physically damaged when you pull
18 the roof off. So our estimate will include three new
19 pipe caps for that, all right, on that particular
20 roof. That's what that means.

21 Q. And in this instance, it's because of the
22 damage you're going to do to the pipe jacks when you
23 remove them to replace the shingles, right?

24 A. Yes, and there's not a reasonable roofer that



1 I'm aware of who would reuse any of those products
2 based on their age.

3 Q. Did you do any brittle testing of the
4 shingles at Forest Ridge?

5 A. I did not personally, no.

6 Q. Do you know if anyone --

7 A. And please understand why I didn't. We talk
8 about wind here, and we've talked about wind today.
9 I'm not replacing these roofs because of wind damage.
10 I'm replacing roofs because of hail damage. There's
11 enough hail damage. So in a way, I really don't care
12 about the wind. It's here. But the hail is the
13 reason we're replacing these roofs.

14 Q. Is the wind damage FBS observed on the roofs
15 by itself enough to warrant full replacement of every
16 roof?

17 A. We didn't investigate that far enough to draw
18 that conclusion.

19 Q. Is that also true with respect to the siding
20 that the scope of repair replacement in the estimate
21 was for hail damage?

22 A. Yes.

23 MS. KAPLAN: Objection, form.

24 THE WITNESS: Specific to the siding, yes.



1 wait. No. Can you -- can I ask her to read back your
2 question? I can't, can I?

3 MR. FORTIN: She can when I'm done.

4 MS. KAPLAN: I'm sorry. Was that to me?

5 THE WITNESS: Let me add, okay. Your
6 question, the way that you phrased it, okay, concerns
7 me because -- I know you probably are not trying to
8 trick me, but there are two reasons that the siding is
9 being replaced. The way that I answered that question
10 would lead the reader to believe I'm only saying
11 siding has to be replaced because of hail. The siding
12 is also going to be physically damaged when it is
13 removed because of the roof replacement. That is what
14 is going to tip us, more than anything, over the top,
15 along with the hail damage, to full replacement.

16 BY MR. FORTIN:

17 Q. okay.

18 A. Thank you.

19 Q. But it's not because of wind damage, I guess,
20 is what I want to be able to just put in a box to the
21 side?

22 A. Not because of wind damage.

23 Q. The report refers to matching issues in a few
24 places in section 7.0.



1 A. Yes.

2 Q. As of November 16, 2017, which is the date
3 this report was signed, what investigation, if any,
4 had FBS done into the availability of matching siding?

5 A. At the issuing of this report, I relied on my
6 experience primarily. It's not an education or
7 training thing. I visually identified the siding as
8 to what I thought was a siding that was no longer
9 manufactured based on similar projects that I have
10 done in other states. So I went with the -- I didn't
11 rely on anybody else. That comes from me. I'm making
12 a judgment at that point in time that the siding is no
13 longer manufactured. It turns out I was correct, but
14 that, again, was based on visually identifying the
15 siding. That's why I pulled it back to look for the
16 manufacturing stamp.

17 Q. So you didn't find a manufacturing stamp, but
18 based on siding you were familiar with from other
19 matters in other states?

20 A. Including Illinois, yeah. It had a signature
21 pattern to it in terms of its size and the embossment
22 on it in terms of the grain, the texture, in other
23 words, of a siding that was no longer manufactured.

24 Q. Aside from what we saw on Building 27 in the



1 photographs you took, was all the siding at
2 Forest Ridge uniform, the same?

3 MS. KAPLAN: Objection to the form. I think
4 that's a very vague question. In what manner?

5 BY MR. FORTIN:

6 Q. Was it all the same color on all 51
7 buildings?

8 A. Two different colors.

9 Q. Was the color the only difference?

10 A. Yes. I don't recall seeing a texture
11 difference.

12 Q. Do you recall whether the two different
13 colors of siding were evenly distributed among the
14 51 buildings? Or I guess that would be an impossible
15 since there's an odd number of buildings. But was it
16 basically half and half?

17 A. I didn't do a calculation of that.

18 Q. To figure that out, we could piece it
19 together from Ms. York's photographs or anyone else's
20 photographs?

21 A. Or drive out there for an hour and drive
22 around and count them.

23 Q. You recall there being two different colors?

24 A. Yes. My impression is it's about half/half.



1 Q. If you'll turn to section 7.9, there's a
2 sentence there that says, "We have been informed that
3 matching siding could not be found." Is the basis for
4 that statement what you told me a moment ago regarding
5 your experience with what you believe was similar
6 siding?

7 A. Yes.

8 Q. Section 7.9 continues: "Due to this, and the
9 requirements from the Village of Streamwood, the
10 damage caused by the storm event will require complete
11 replacement of the vinyl siding at the affected
12 buildings." Did I read that correctly?

13 A. Yes.

14 Q. The phrase "affected buildings," does that
15 refer to the, I think you said roughly half of
16 buildings where FBS found siding damage or does that
17 refer to all 51 buildings?

18 A. All 51 buildings. Damage to the roof will
19 envelope into siding replacement as well.

20 Q. Is that part of what's incorporated into that
21 sentence? I read this paragraph 7.9 as saying,
22 complete replacement of the vinyl siding on all
23 buildings is necessary due to the unavailability of
24 matching siding and the requirements from the Village



1 of Streamwood. Is that accurate or am I
2 misunderstanding it?

3 A. That is -- well, those are two of the
4 reasons. The other reason is physical damage and the
5 general scope of work regarding the roofs. The
6 village of Streamwood is not going to walk into one of
7 their associations and say, hey, tomorrow, replace
8 your siding. Something has to trigger that.

9 Q. Would the physical damage to siding by itself
10 require replacement of all siding on all 51 buildings?

11 A. The physical damage to the siding from hail
12 would require -- so let's suppose that we have -- I
13 know you guys like to use hypotheticals. Let's
14 suppose hypothetically on Building 5 we had damage.

15 Q. So Building --

16 A. Building 5, just pull one out. Let's say
17 Building 5 hypothetically. Let's suppose we had
18 damage on the right facing elevation, and we had
19 damage on the left facing elevation for some reason,
20 okay, from hail. The city is going to require that a
21 piece of siding from the right elevation be removed,
22 and a piece of siding from the left elevation be
23 removed. And that those exemplars each are going to
24 have to be compared to available matching or possible



1 matching sidings, and then they are going to be the
2 final judge and juror on whether or not they're going
3 to allow that siding to be installed on those two
4 elevations and the other siding stay or whether
5 they're going to say, no, you touch the one side, you
6 got to take it all off. They get to decide that.

7 As a building -- licensed Building Code
8 official, I'm trained, and I've been qualified in the
9 courts to interpret the Code. I can't enforce the
10 Code in Streamwood. The only person that can do that
11 is the code official in Streamwood. But based on the
12 conversations and the reading of his deposition,
13 they're putting forth a fairly strong position on what
14 they're going to look for. So I'm estimating right
15 now you're probably going to be presenting about 120
16 samples of siding to ITEL to fulfill their obligation
17 just to find out if you can even do it.

18 Q. How did you get to 120?

19 A. Based on the damage we're seeing, the number
20 of sides that are damaged, the number of pieces.
21 That's, I think, what's going to happen.

22 Q. So is 120 the total number of pieces you're
23 saying is damaged or that's the total number of sides
24 across all 51 buildings?



1 A. Total number of sides where we have an
2 exposure issue, yeah.

3 Q. So what's the math that you do for the 120?

4 A. 51 buildings. There's not damage -- so 51
5 buildings, I've got damage on a couple of buildings --
6 on some buildings on two sides. As I said already,
7 I've got buildings on one side. So I didn't take 51
8 times four, okay. I took 51 times two and a slop
9 factor. So maybe it's 80 pieces of siding. But it's
10 going to be a large number of pieces of siding that
11 physically have to be removed to do this just to get
12 to yes or no.

13 Q. If this homeowners association was in a
14 different village, not Streamwood where they have this
15 matching ordinance or exception, would the physical
16 damage to the siding at Forest Ridge still require
17 replacement of all elevations on all 51 buildings?

18 MS. KAPLAN: Objection, relevance.

19 THE WITNESS: Well, it might have prior to
20 the recent court case that just came down in Illinois
21 regarding the matching issue where it's been codified
22 now like Minnesota that matching is now in play. So I
23 think had the work been done in a different
24 municipality, but I think that's a legal question that



1 I can't answer. I just know that there is a recent
2 court case now that supports the Minnesota ruling on
3 matching, and so it's changing the landscape, as
4 happens with the law.

5 BY MR. FORTIN:

6 Q. So what I'm trying to get at or understand
7 is, I know that it's your opinion that there's an
8 issue as to matching, there's an issue regarding the
9 village of Streamwood requirements, and then what's
10 going to be entailed by replacing the roofs. We'll
11 tackle all that next. I'm just trying to understand,
12 if you just take the physical damage to the siding
13 caused by hail, what's the work necessary to replace
14 that damage aside from the matching and code?

15 A. I don't think we know the full extent of
16 that, because we haven't pulled siding back on every
17 building. However, if, for example, the piece of
18 siding that Mr. Johnson pulled back and there is no
19 weather resistant barrier, if that is an elevation
20 where there is a damaged piece of siding, it would be
21 my opinion that that entire side then is going to be
22 detached for the purposes of putting a weather
23 resistant barrier on, and then whatever is salvageable
24 will be put back on and then you would intermix new



1 siding with that.

2 Q. Is the weather resistant barrier also a code
3 requirement?

4 A. Yes. It was not at the time. It is now.

5 Q. When you say "at the time," what are you
6 referring to?

7 A. Building Code did not require weather
8 resistant barrier for a certain slot of time.

9 Q. Right. So what time is that?

10 A. That would have been...

11 Q. Are you referring to when Forest Ridge was
12 built?

13 A. Yeah, when it was built. That's what I
14 meant. Thank you.

15 Q. There are some buildings at Forest Ridge
16 where FBS did not find any siding damage, right?

17 A. Correct.

18 Q. Is there any reason the siding on those
19 buildings needs to be replaced other than what will be
20 entailed by replacing the roofs on those buildings?

21 A. I can only think -- the roofs would be the
22 only reason. I can think of one other possibility
23 that I have run into before with associations.

24 Depending on the bylaws of the association, which



1 sometimes I've seen can require a signoff by a certain
2 percentage of the members or something like that, it
3 may be such a thing where if more than a certain
4 percentage of these buildings are getting replaced,
5 they may say, no, we're replacing everything by our
6 bylaws. That could be the only other thing I could
7 think of. I don't know if that's exists here or not,
8 but I've seen it before.

9 Q. If the Code did not exist or was not enforced
10 and you weren't replacing any of the roofs and if the
11 bylaws don't come into play --

12 A. Then we're in Texas or Alabama.

13 Q. But in that scenario --

14 A. Where they don't care.

15 Q. In that scenario, in that hypothetical, to
16 replace the physically damaged siding, would you just
17 be able to replace the elevations that contained
18 damaged siding?

19 MS. KAPLAN: Are you talking about physically
20 able to do it?

21 THE WITNESS: You can do anything. I mean, I
22 can't tell you what I've seen around this country.
23 I've seen pieces of metal put in. I've seen wood
24 intermixed with vinyl. I've seen shingles nailed in



1 with -- you can do anything you want.

2 BY MR. FORTIN:

3 Q. I mean that as a matter of...

4 A. Is that returning it to pre-loss condition?

5 Q. That's not the question.

6 A. But that's one of the requirements under the
7 policy. Come on. You know, if we're in appraisal
8 right now, I'm arguing this that --

9 Q. We're not, though.

10 A. But I have specific training in that field.
11 I cannot think about that and have that on my mind as
12 I'm testifying as an expert. So returning this to a
13 pre-loss condition is a big issue here. All the
14 questions that you're giving me don't do any of those
15 things, don't address that issue.

16 Q. That's your opinion, and that's fine.

17 Are you able, though, to answer the
18 hypothetical with the caveat that you don't believe it
19 would restore the buildings to a pre-loss condition?

20 A. I will tell you that there is one instance
21 that I can recall where for the purposes of settlement
22 in an association with about 30 buildings and vinyl
23 siding that was only two years old, two years old,
24 that had vinyl siding damage to one side of each



1 building, siding was removed from four buildings
2 completely to harvest the siding for repair to the
3 other buildings because they had weather resistant
4 barriers, there's no fading on the siding, the
5 siding's still under warranty, everything lined up
6 perfectly, the stars aligned, and then the carrier
7 paid or agreed to pay for new siding on those four
8 buildings.

9 So yeah, there's all kinds of workarounds
10 that I've seen and that I have actually been involved
11 in. We just don't have any of those options here. It
12 sucks.

13 Q. Is that option not available here because of
14 the roof work, the Code, and matching?

15 A. Yes.

16 Q. Any other reasons why that particular option
17 is not available here?

18 A. Age, age of the product. And we also
19 don't -- we have evidence in front of us that there's
20 not a consistent weather resistant barrier on these
21 buildings. We have some that have it, some that
22 don't. And so putting together a spec for that repair
23 would be difficult because we have an unknown. In
24 that other scenario, we had all the perfect alignment



1 to do that. And I put that forth to let you know that
2 FBS and me, in particular, is not unreasonable at
3 looking at repair options when they're available.
4 Here, it's just not.

5 Q. Exhibit 129, do you recognize this document,
6 sir?

7 A. I do. Thank you. Yes.

8 Q. And is this your estimate?

9 A. Yes, it is.

10 Q. You're using an Illinois, Cook County
11 November 2017 price list, right?

12 A. Yes, I am.

13 Q. Is that the default price list based on the
14 date this estimate was generated?

15 A. Yes. This is not based on date of loss.
16 It's based on the fact that the work had not been done
17 at the point when we generated this estimate, so this
18 would be current pricing as of that date. I would
19 expect that if we ran numbers today, which might not
20 be a bad idea if discovery is still going on, that
21 because of the hurricanes that have occurred, the
22 pricing will be higher in 2018 of June 1st than it is
23 today by probably as much as 10 to 12 percent bottom
24 line. It's a lot of money, yeah.



1 Q. On this first page of the estimate, the type
2 of loss, it says hail.

3 A. Yes.

4 Q. Is there any particular reason it does not
5 also say wind?

6 A. Yes. Because we did not look at this as a
7 wind loss. There was enough damage here caused by the
8 hail to require the scope that's within this estimate.

9 Q. So you didn't estimate the cost to repair,
10 replace wind damage to the property?

11 A. No. That got rolled into the damages that we
12 see here.

13 Q. Generally speaking, is the scope of this
14 estimate the replacement of all roofs and all siding
15 on all 51 buildings?

16 A. Yes, it is -- yes, exactly.

17 Q. Are you familiar with the term ESX file?

18 A. Yes.

19 Q. You understand that to be the native
20 Xactimate file for an estimate?

21 A. Yes, I do.

22 Q. Does FBS still have the EXS file for this
23 estimate?

24 A. Yes, we do.



1 Q. who created this estimate? Or I can ask a
2 better question. Let me try that again.

3 Did anyone assist you in generating this
4 estimate?

5 A. Yes.

6 Q. who?

7 A. My son Jim did the data entry on it.

8 Q. what data did he use to enter?

9 A. well, certainly he used the information off
10 the EagleViews. He used the information off of photos
11 and off of the report. The estimate is generated
12 after the report is written.

13 Q. Right. So the EagleViews are used for the
14 measurements of the structures, right?

15 A. Yes. well, and the number of penetrations,
16 length of valleys, you know, those kinds of things.

17 Q. what from the photos did Jim look at to
18 assist in putting the data for this estimate?

19 A. Just one second.

20 Q. Sure.

21 A. The only part that EagleView doesn't do a
22 good job on with theirs is the lineal footage around
23 windows, because with the Tyvek system -- and we've
24 all been through Tyvek training in our company. Tyvek



1 has two options when you're using their product in
2 terms of maintaining a warranty for the Tyvek system.
3 There is a retrofit option. Retrofit option would
4 allow us to leave the windows in place and to tie into
5 those with a flashing tape. The non-retrofit option
6 would have required us to remove every single window
7 and put in a sill pan flashing, which probably would
8 have added another million dollars here to this thing.

9 So that could also explain why I'm thinking
10 when I'm talking to Steve about it could go this
11 amount of money, I may have been thinking at that
12 point in time, let's pull the windows, because that's
13 what we had to do in other cases. Here we deemed that
14 you could leave the windows in place, and that's the
15 way that we estimated it.

16 So, for example, on page 3, line item 22B and
17 23 and line item No. 21, these flashing details, those
18 lineal footage did not necessarily show up on
19 EagleView so we had to generate those costs.

20 Q. So that would be the reason for looking at
21 photos?

22 A. Yes. How many windows are there, what are
23 the size, and do lineal footage takeoffs, yeah.

24 Q. What would Jim have referred to the report



1 for when inputting the data for the estimate?

2 A. Just the scope of repair. He would have
3 reviewed the scope of repair.

4 Q. That scope being replacing all roofs and all
5 siding on all buildings?

6 A. Yes.

7 Q. It's my understanding that there's -- the 51
8 buildings are a few different types, right, there's
9 A, B, C, D, E?

10 A. Yes.

11 Q. And the scope of replacement in this estimate
12 is the same for all 51 buildings, right?

13 A. Well, the scope is, but the takeoffs are
14 different. The unit price is the same because the
15 pitch is the same, the buildings are generally the
16 same size, but the square footage counts and lineal
17 footage counts will be different by building style.

18 Q. So all type A buildings, would we expect the
19 line items, their quantities and unit prices to be the
20 same as all other type A buildings in this estimate?

21 A. Potentially, unless for some reason there is
22 an additional satellite to take off the building,
23 there might be an additional vent that comes through
24 the building, those kinds of things. There may be



1 something that is an outlier. Because, for example,
2 when you look on page 2 of Building 1 type A, your
3 general roof ACV price is 40,093, and when you look on
4 page 6, type A, your ACV is 39,861. So, again,
5 there's a small nuance difference there. I just
6 haven't done the line items, but we obviously can
7 explain what those are.

8 Q. So aside from, you know, a deviation in a
9 vent or satellite system, we would expect the line
10 items for each type of building to be uniform?

11 A. Yes, we would. And, in fact, there is no --
12 as an example, on Building 4, there are no satellites.
13 On Building 1, there are. There's five satellites.
14 Those would be the differences. Otherwise, they're
15 going to be pretty darn close.

16 Q. And is Jim also looking at the photograph to
17 determine how many, if any, satellites are on a
18 building?

19 A. Yes.

20 Q. So I just want to go through one or two
21 buildings, and then we'll jump to the end.

22 Line item 1, you're removing three tab,
23 25 year?

24 MS. KAPLAN: what building are you on?



1 MR. FORTIN: Building 1, line item 1.

2 BY MR. FORTIN:

3 Q. So line item 1, you're removing the existing
4 shingles, right?

5 A. Yes.

6 Q. And that's just labor?

7 A. Yes.

8 Q. Line item 2, you're replacing those shingles,
9 and you have 15 percent waste added?

10 A. That looks like a -- yes, because of the
11 number of valleys. And this was a mistake, in my
12 opinion, that was made by Held in their estimate.
13 They're using an 8 percent waste factor, which would
14 be standard for a roof without valleys and without the
15 complexity of these roofs. So they are under on their
16 waste. Anyway, continue.

17 Q. 3A is remove ridge cap?

18 A. Yes.

19 Q. Is the ridge cap the ridge shingles that are
20 laid over the ridge vent?

21 A. Yes.

22 Q. But that's not captured in the number of
23 squares for removing the shingles in line item 1?

24 A. Correct, it's not.



1 Q. Line item 5, ice and water shield, is that
2 line item for removal and replacement or just
3 installation?

4 A. Installation. There is no ice and water
5 shield on the buildings. And this is another item
6 that I found interesting when I was looking at the
7 J.S. Held field notes and looking at their actual
8 estimate. In their field notes, for example, on
9 Building 1, they have almost the identical square
10 footage, but then in their estimate, they show
11 1,600 square feet. So they literally didn't take the
12 information off their field notes. They downsized --
13 which I see an J.S. Held estimates all the time, by
14 the way. They downsized the square footage. So they
15 have an estimate that doesn't have enough ice and
16 water shield.

17 Q. Is the ice and water shield a code
18 requirement?

19 A. Absolutely.

20 Q. What's a drip edge?

21 A. A drip edge is metal edge that goes around
22 the perimeter of the roof. That is required now by
23 all shingle manufacturers.

24 Q. What's L flashing?



1 A. L flashing is at the intersection of any wall
2 to roof, the front edge of the -- not the step
3 flashing, but the L flashing. And that exists on the
4 lower parts of the roofs.

5 Q. Line item 8, does that encompass removal and
6 replacement of the step flashing?

7 A. Yes.

8 Q. Why did you break out removal and replacement
9 of the L flashing into different line items but not
10 the step flashing?

11 A. I'd have to go into the ESX that gives you
12 two choices. I don't think the L flashing gives you
13 two choices -- or gives you a single choice. Step
14 flashing does give you a single choice.

15 Q. As we sit here today, though, are you --

16 A. Comfortable with the price, yeah.

17 Q. As far as the reason why it's broken out into
18 two line items, I mean, is your answer that you would
19 have to check?

20 A. Yeah, I'd have to check. It's still going to
21 be -- the price of 398 plus 54 cents is a reasonable
22 price. That's very consistent with what I would
23 expect it to be.

24 Q. 10A and 10B, removing and replacing the



1 flashing on the pipe jack?

2 A. Yeah, there's 10 of them, 10 penetrations to
3 the roof.

4 Q. Is that 10 pipe jacks?

5 A. Yes.

6 Q. And would that come from the EagleView?

7 A. Yes.

8 Q. And you're just attaching and resetting the
9 digital satellite system?

10 A. Yes.

11 Q. And so that would be Jim, from the photos,
12 counting how many there are. For Building 1, he
13 apparently found five?

14 A. Yes.

15 Q. What's a vinyl J vent?

16 A. Just a second.

17 Q. Sure.

18 A. He's including that in the roofing as opposed
19 to the siding.

20 Q. Line item 17, detach and reset siding vinyl
21 high grade. Why are you detaching and resetting the
22 vinyl siding?

23 A. In that particular location?

24 Q. Let's take a step back actually. What



1 location does that line item refer to?

2 A. That is where the roof to wall intersects.

3 Q. And so is that one piece -- is that the top
4 piece of siding all the way around the building?

5 A. No, because the siding comes in like this to
6 the roof. So your roof is sloped like this. Your
7 siding comes in like this. I have to take all of
8 the -- I'm sorry. This is my roof. My siding comes
9 in like this on my wall. I have to take the step
10 flashing off of here, so I have to take all this
11 siding all the way off to get to that step flashing.
12 I could show you better on a picture.

13 Q. Yeah, if you could, that would be great.

14 A. So in Exhibit...

15 Q. 253.

16 A. 253, photograph No. 28. Basically what has
17 to happen is the step flashing goes up this side wall
18 this high. So in order to get that out of there, I
19 got to take all this siding here off, all this siding
20 here off.

21 MS. KAPLAN: If we don't have it marked now,
22 I'm going to have to go back and do it. And I just
23 think to make a cleaner record, can we have him
24 identify on the photo what he's referring to now?



1 MR. FORTIN: You want him to put pen to
2 paper?

3 MS. KAPLAN: Yes, please, if you're okay with
4 that.

5 MR. FORTIN: Yes.

6 THE WITNESS: So all this siding. And this
7 actually was in the first J.S. Held bid, as well, or
8 estimate. So they were doing the same thing.

9 Now, what's interesting in thinking about
10 this is that this estimate was produced prior to the
11 deposition by the representative from the city of
12 Streamwood. Based on my review of that testimony, I
13 would amend this estimate to, instead of detach and
14 reset, I would remove and replace.

15 BY MR. FORTIN:

16 Q. why?

17 A. Because of the matching issues now that he,
18 in my opinion, has codified that the siding is coming
19 off these buildings and be replaced. And the fact
20 that we were able to find, based on the supplemental
21 report that I did, that the siding is no longer
22 manufactured. We have physically verified that, and
23 that's in the supplemental report. So in this sense,
24 this estimate should be revisited.



1 Q. Some of the line items for the roof on this
2 first page of the estimate subtract an amount for
3 depreciation?

4 A. Yes.

5 Q. Who determines how much depreciation to take
6 and from which line items?

7 A. I did.

8 Q. And what was your basis for doing that?

9 A. My basis for depreciation was the last five
10 or six or seven appraisals that I've been involved in
11 in this general same location of Illinois on other
12 associations where we have depreciated labor only and
13 not -- I'm sorry, where we have depreciated materials
14 only and not labor, where we have depreciated only new
15 materials -- I'm sorry, only existing materials. So,
16 for example -- let's take a look here. Just a minute.
17 Yeah, just materials, that's all we're doing.

18 So on line item No. 2, the RCV price of --
19 total of \$18,860.47, that is labor and material.
20 Inside that is just a material price. So we pulled
21 out the material price only out of the 18,000, and
22 then we took a depreciation on that. I can't remember
23 right now what that was, but the ESX would tell me. I
24 think it was about 25 percent on material only.



1 Q. So just from looking at the estimate that we
2 have marked here as Exhibit 129, we can't tell what
3 that material number is within a given line item from
4 which the depreciation taken?

5 A. Not with the information right here in front
6 of us, but I can -- when I have it on the computer, I
7 can pull it out just like that. So for trial we would
8 prepare certainly all of that information on how we
9 arrived at the formula, the whole bit.

10 Q. And what percentage of depreciation did you
11 take -- or actually, let me ask a different question
12 first. Did you take the same percentage of
13 depreciation across the board for materials in this
14 estimate?

15 A. Yes.

16 Q. What percent depreciation did you take?

17 A. I can't tell you right now, but I think if
18 memory serves me, it was 25 percent on materials only.

19 Q. And what was the basis for using 25 percent?

20 A. Well, two things. One -- well, three things.
21 One, condition, age, and my training, education, and
22 experience as an appraiser who has to do this every
23 day on similar projects. And in particular, having
24 just completed this on about 10 appraisals in this



1 same area and having panels agree to those general
2 numbers. In some cases -- so, for example, we just
3 finished one where we depreciated the materials at
4 about 50 or 60 percent, because the roof was -- I
5 mean, it's trashed basically, the condition of that
6 roof.

7 Q. Would those appraisals be listed in your CV?

8 A. Yes.

9 Q. You also said, I think, the age and condition
10 of the materials?

11 A. Yes. What I like to explain on that is, I
12 just finished investigating a project down in Texas,
13 you know, last fall. And it's a hotel that's only
14 five years old, and that roof looked 60 years old on
15 that thing. So in that situation, I would depreciate
16 the hell out of that, even though it's only five years
17 old, because the condition of it was terrible. So you
18 can't just base it on age. You got to look at
19 condition as well. In general, based on the age, this
20 roof was in pretty good condition in the field of the
21 roof where it wasn't physically damaged by hail. It's
22 got a lot of life left in it absent of the hail
23 damage. So I thought 25 percent was a reasonable
24 depreciation.



1 Q. Your report that we just went through,
2 Exhibit 160, does not address the reasoning behind the
3 depreciation, right?

4 A. No, it does not. I had specific training on
5 depreciation when I became certified as an umpire and
6 appraiser.

7 Q. And who certified you?

8 A. That was through WIND and NAPIA. And that is
9 a class that's taught by two attorneys. It's an
10 eight-hour class and half of it is on appreciation.

11 Q. And who are those two attorneys?

12 A. One was from a defense firm, defense
13 insurance firm, and one was from a plaintiff's firm.
14 I can't remember the names. It was two years ago in
15 California.

16 Q. Would it be listed in your CV?

17 A. It should be, yeah. It's one of the NAPIA,
18 WIND conference things that I attended in Los Angeles,
19 yeah.

20 Q. Do you have any other training that touches
21 on depreciation and actual cash value?

22 A. Not specific training, just what I've done in
23 20 years of doing appraisals.

24 Q. Moving to the exterior of Building 1.



1 A. Yes.

2 Q. Line item 18A, remove gutters/downspouts up
3 to five feet?

4 A. Five inches.

5 Q. I'm sorry. Up to five inches?

6 A. Yes.

7 Q. What is the up to five inches?

8 A. It's the size of the gutter. When you get to
9 six inches and above, it's a commercial size, so the
10 price point goes up.

11 Q. And 210 linear feet, does that represent all
12 the gutters and downspouts on the entire building?

13 A. Yes.

14 Q. And what is the reason for removing and
15 replacing all the gutters and downspouts?

16 A. Practicality. One, there is some physical
17 damage that we identified in photos of hail damage.
18 The practicality on a project like this is that the
19 contractor is not going to leave them up there because
20 setting ladders against them and having shingles fall
21 on them is going to dent them and damage. Then taking
22 them off and storing them on the ground and then
23 reinstalling them typically damages them as well.
24 They get damaged while they're on the ground. So



1 standard practice is to replace them. It's not a huge
2 amount of money per line item. That's why we're doing
3 it.

4 Q. Does the hail damage to the gutters and
5 downspouts require them to be replaced?

6 A. Yes. There's physical damage to them, yes.

7 Q. But I guess my question is, would that alone
8 warrant or require replacing all the gutters and
9 downspouts?

10 A. Yes. There's a change in condition. There's
11 physical damage from hail, yes.

12 Q. And that in and of itself to you is
13 sufficient to require replacement?

14 A. Yes.

15 Q. 19A and 19B call for the removal and
16 replacement of vinyl siding?

17 A. Yes.

18 Q. The 8,016 square feet quantify for those line
19 items, is that separate from the 362 square feet of
20 siding that's being detached and reset in line item
21 17?

22 A. Yes.

23 So effectively what would happen is, the
24 detach and reset, which is \$2.17 a unit price is going



1 to jump up to 4.23. So it's going to be about double.
2 So that's 320 -- so effectively you could say the line
3 item 17, if I redo this estimate, is going to jump to
4 1,800 and change as opposed to 900 and change.

5 Q. And tell me again why would you be changing
6 that line item.

7 A. Based on reading the deposition of the
8 Building Code official.

9 Q. What specifically from his testimony?

10 A. The matching issue and the siding not being
11 commercially available anymore. By detaching and
12 resetting, I'm now creating a matching issue. Because
13 I'm doing new siding below, and I'm going to put the
14 old stuff up on the top. And now I'm going to have a
15 mismatch. That's why.

16 Q. What's the vinyl J trim?

17 A. That's a J channel. Right up around all the
18 windows, wherever the siding comes into a window, you
19 have a little piece of material called a J channel.
20 It slips into the channel.

21 Q. Line items 22A and 22B, they have an asterisk
22 at the end of them, at the end of description. Can
23 you tell me what that means?

24 A. No, I actually can't tell you why that's on



1 there. Didn't even notice that before.

2 Q. Would that also be the case for the asterisk
3 after the sill flashing manipulation?

4 A. Yes, that might be a note for a price check
5 that came through at the time, which is usually a note
6 that means the price is going up.

7 Q. Are you speculating that that's what that
8 means?

9 A. I'm speculating that's what that means. I've
10 seen that before. But right now without having the
11 ESX, I can't tell you what that is.

12 Q. Do you recall whether Building 1 was one of
13 the buildings where someone pulled back the siding to
14 see if there was a weather resistant barrier there?

15 A. It doesn't make any difference if there's one
16 there. The one that's there has to come off if it is
17 there. I can't reuse the weather resistant barrier.
18 It's full of holes now.

19 Q. Is that required by code?

20 A. It's required by the manufacturers. I mean,
21 I have to have the -- it's part of the vinyl siding
22 package. I have to have a weather resistant barrier
23 behind there.

24 Q. Right. Assuming there's one there, you're



1 saying you need to remove it and replace it because
2 it's full of holes, right?

3 A. Yes.

4 Q. Full of nail holes?

5 A. Yes. Not hail holes, nail holes.

6 Q. Is the replacement of that house wrap
7 required by code?

8 MS. KAPLAN: Asked and answered.

9 THE WITNESS: No. I would not put that if I
10 were -- and we do this at appraisal where we will
11 bifurcate out what we think are code-related items
12 under ordinance and law. And, again, I'm not giving
13 you an opinion here about what's covered and not or
14 whether you have ordinance and law and coverage. I
15 don't know. I don't care.

16 In this particular case, I would not put
17 that -- if I were an umpire or even an appraiser on
18 either side of the fence, I wouldn't put that into a
19 code issue. That's an undamaged piece of material
20 that has to come off as part of the scope of repair.

21 BY MR. FORTIN:

22 Q. If there was no weather resistant barrier
23 partly on Building 1, would the adjustment to the
24 estimate just be to remove line item 22A?



1 A. The adjustment would be to remove line item
2 22A, and then the adjustment would be to take
3 \$3,088.39 of 22B and move that into an ordinance and
4 law category.

5 Q. And that would be true throughout the rest of
6 the buildings depending on whether there is currently
7 a weather resistant barrier underneath the siding or
8 not?

9 A. Correct.

10 Q. Just flipping back to the previous page
11 momentarily. Roof line items for Building 1, are
12 there any of those items that you would put in an
13 order and law category?

14 A. No.

15 Q. And then same question for the exterior line
16 item Building 1?

17 A. Just the house wrap if it doesn't exist.

18 Q. Why are you removing and replacing all of the
19 vinyl siding on Building 1?

20 A. Because I am removing it at the roof, and
21 it's going to get physically damaged based on my
22 inspection on the site, the way it's nailed in.
23 what's going to get damaged -- the vinyl siding,
24 there's a tool called a zip tool. You reach under the



1 lip and you run it along and you unzip the vinyl.
2 That's what you see most in pictures. If that's done
3 correctly, there's no physical damage to the vinyl
4 siding. However, the vinyl siding is fixed to the OSB
5 sheathing with roofing nails. They're a galvanized
6 hot dipped roofing nail. Here's the problem: The
7 only way to get that out of there is to either pull
8 the siding and break the nail flange on the siding,
9 which now I'm replacing that 16 foot piece of siding
10 because now I've broken the flange, or I have to get
11 underneath and pry, and in the prying process, you
12 break that flange about 60 percent the time. And
13 that's if you're doing careful, close surgical roof.
14 The reality at the end of day is the labor force that
15 we utilize in the United States to do these kinds of
16 jobs, they don't take care. They're literally going
17 to rip and pull as quick as they can.

18 Q. And that's because of the use of the
19 galvanized steel nail?

20 A. Yes.

21 Q. Is there an alternative that would have
22 avoided that issue?

23 A. No. It's a what the manufacturer recommends.
24 These are not designed to be removed and replaced.



1 It's a one-time deal.

2 Q. What manufacturer?

3 A. Well, vinyl siding -- okay. The Vinyl Siding
4 Institute which jurisdicts the installation guidelines
5 for all vinyl manufacturers. They used to allow you
6 to install with staples. They don't anymore.

7 Q. Then why do the Vinyl Siding Institute still
8 talk about the zip tool where you can just unzip it?
9 Is that no longer --

10 A. No, they're talking about unzipping it.
11 That's all they're talking about. This is where, when
12 you sit in the class and you raise your hand and you
13 ask those secondary questions that the discussion goes
14 to the next level, well, you're right, we talk about
15 zipping it open, but you're right, we really don't
16 address the fact that when you start prying back those
17 nails, you're going to break the hell out of the top
18 channel, which is how you install it, so you're going
19 to have to put a new piece of siding in. What they're
20 assuming when you zip it open and you pull it off,
21 that you're not reusing that siding. They're assuming
22 you're putting a new piece of siding in. Why, because
23 they make siding. They sell siding. They don't want
24 you to reuse siding. That's why they tell you to use



1 galvanized roofing nails.

2 Q. So can you just replace the top piece of
3 siding?

4 A. If I had it commercially available. I don't.
5 what am I going to replace it with, a mismatched
6 piece?

7 Q. So the difficulty in removing that top piece
8 of siding where it intersects with the roof, that's a
9 function of the fact that you're replacing the roof?

10 A. Yes.

11 Q. And then --

12 A. But see, understand that piece of siding --

13 Q. Let me finish. And then the need to replace
14 the rest of the siding below that, is that a function
15 of it's no longer going to match with what you need to
16 replace that top row with?

17 A. Correct.

18 On the picture that I showed you that we
19 circled, okay, as the roof comes down at an angle like
20 this and the siding -- the siding doesn't run like
21 this with the roof. I can't just take one piece of
22 siding off and take the flashing off. On a 20 foot
23 span, I'm going to have 40 pieces of siding that are
24 going to come into play that I have to peel all the



1 way back. That's 40 times probably 10 fasteners
2 per -- that's 400 fasteners that are potentially going
3 to break the siding during the removal process.

4 Q. The galvanized steel nails are only used at
5 the top row?

6 A. Yes.

7 Q. And did you observe that on all of the
8 buildings you inspected?

9 A. Yes. Any time we pulled back siding, we saw
10 that, and that would be standard installation. We
11 looked for one or two things. You're either going to
12 have staples or you're going to have the nails.

13 Q. When you pulled back the siding on the site,
14 that was at ground level, right?

15 A. No, it's up on here. It's right here. I'm
16 up on the roof.

17 Q. And this is your photo log figure 29?

18 A. 29. There's your galvanized roofing nail
19 right there.

20 Q. And that's showing you; you're peeling back
21 the top row of siding, right?

22 A. Yes. Well, not the top row. I'm peeling
23 back a middle row, just a row. I'm just taking one
24 little piece and peeling it back.



1 Q. So the galvanized steel nails are used even
2 in the middle rows?

3 A. Oh, God, yeah. They're used on every piece.
4 Every piece every 16 inches has a nail. So a 16 foot
5 piece is going to have 10 nails in it.

6 Q. So how are you able to peel back that piece
7 of siding?

8 A. What it does is it channel locks like this.
9 So this right here is where the nails go in. The next
10 piece lays over and channel locks. So what I'm doing
11 is, I'm zipping that and pulling this up, and then
12 you're seeing these nails. So I have to unzip this as
13 well. So now I got these two pieces flapping. I've
14 got with one nailed. I take those nails out. I slide
15 that piece out. I slide a new piece in. I renail,
16 and then I just clip those other pieces back in place.
17 If I had siding that matched, I could potentially do
18 that.

19 Q. You're taking 10 and 10 for O&P?

20 A. Yes.

21 Q. And is that because you think a general
22 contractor would be needed?

23 A. Yes. On this size project, absolutely.

24 Q. The figure for permits and fees, you have



1 77,134.94?

2 A. Yes.

3 Q. Where does that number come from?

4 A. That comes from the work we did on Southgate.
5 Each municipality -- and we did not verify whether
6 that has that changing or not. But on the Southgate
7 project, what we were told then, which we believe is
8 still true today, is that they charge based on the
9 units, not the buildings. So each little municipality
10 has their way of charging an additional user tax. So
11 it's not a permit based on 51 buildings, it's a permit
12 based on -- how many units are there, 510 units or
13 something like that.

14 (Whereupon, Exhibit No. 254 was
15 marked for identification.)

16 BY MR. FORTIN:

17 Q. I'm handing you Exhibit 254. Do you
18 recognize that as your supplemental report?

19 A. I do.

20 Q. The picture on the first page here, that's a
21 picture from the storage unit where some of the
22 original siding is still in some boxes, right?

23 A. Yes.

24 Q. Have you physically gone out to the storage



1 unit?

2 A. No, I have not.

3 Q. The pictures were provided to you by counsel?

4 A. Yes.

5 Q. On page 1, the last sentence of background
6 information, it says, "Based on our review of the
7 labels on the boxes, we were able to ascertain that
8 the Brentwood siding was manufactured by Ply Gem."

9 A. Yes.

10 Q. Is Ply Gem then the manufacturer?

11 A. Yes. Brentwood is the style.

12 Q. And what's Mastic? I've seen that.

13 A. Mastic was -- Mastic I think purchased
14 Ply Gem or Ply Gem purchased Mastic. It's one or the
15 other. That's one of the reasons for the
16 discontinuation was that merger.

17 Q. How do you know that?

18 A. How do I know what?

19 Q. That that merger was one of the reasons for
20 the discontinuation?

21 A. I'm sorry. I don't know that. You're right,
22 that would be incorrect. I have seen that happen with
23 other mergers of other building product manufacturers
24 where then they discontinue a certain amount of the



1 line and have another product take that over. I've
2 seen it in roofing. I've seen it in other things.
3 I'm speculating that's what occurred.

4 Q. Am I correct that the photographs you
5 received from counsel show boxes of two different
6 colors of that Brentwood siding?

7 A. Yes.

8 Q. Desert, and I think the other one was sage?

9 A. Yes.

10 Q. But otherwise, is it your understanding that
11 those two different types of siding in storage are the
12 same?

13 A. Yes.

14 Q. You had a phone call with someone at Ply Gem
15 on March 22, 2018?

16 A. Yes, and then an email.

17 Q. The first bullet point from the phone call,
18 you state that the siding had been discontinued in
19 late 2015?

20 A. Yes.

21 Q. The siding, does that refer collectively to
22 both colors?

23 A. Yes.

24 Q. And the siding had a unique wood grain



1 pattern, that bullet point continues, that is no
2 longer manufactured; the new product does not have
3 this. Was that wood grain pattern the same on both
4 colors of siding?

5 A. Yes.

6 Q. The next bullet point says, "She indicated
7 that some fading could be expected on a product that
8 was 10 to 12 years old." Does that accurately reflect
9 what she told you during that phone call?

10 A. Yes.

11 Q. Was all the siding at Forest Ridge faded to
12 some degree as far as you could tell?

13 A. Yes.

14 Q. Did some areas appear to have faded more than
15 others?

16 A. Yes. I mean, I didn't -- the only way to
17 verify that would be to physically remove siding from
18 a north side and bring it over and hold it up to the
19 south side and vice versa. We know with vinyl siding,
20 in general, and you learn this when you take the vinyl
21 siding class that I took, that that is the biggest
22 issue with vinyl siding is fade. That's consistently
23 been an issue. In fact, if I remember right, the
24 Building Code actually addresses it, the fade issue,



1 the actual International Building Code.

2 Q. If you'll turn to page 4, section 1.1.

3 A. Yes.

4 Q. The siding that's depicted in that
5 photograph, do you know if that's the desert sand or
6 the sage color?

7 A. Just a second.

8 No, I don't, as I sit here right now, no.

9 Q. Page 6, figure 4, does that show the -- is
10 that Brentwood double four inch what's currently out
11 there?

12 A. Yes, this is the current available siding.
13 And it makes sense to me that they've gone with a
14 smoother grain like this. They're trying to compete
15 with Hardie, Hardie board, which has a much smoother
16 grain. It's kind of the style that people are putting
17 on their houses now. Nobody likes that rough cedar
18 look any more. It's kind of an '80s, '90s look, so it
19 makes sense.

20 Q. Section 2.0, you state that the open box of
21 siding will not be sufficient to return the property
22 to a pre-loss condition for the following reasons, and
23 then you have three bullet points there. The first
24 one says, "The Building Code prohibits installation of



1 used building products without consent of the code
2 official." Is there a particular section of the
3 Building Code that would state that?

4 A. Yes, it's in the Building Code.

5 Q. Do you offhand know what section that is?

6 A. It's in the administrative section,
7 section 1, and I think it's 105 or something like
8 that. I can certainly find it for you. One thing
9 you'll learn in your training as a Building Code
10 official is, you do not have to memorize the Code; you
11 just need to know where to find it.

12 Q. Those aren't the local amendments by
13 Streamwood, right?

14 A. No. That is in the overall code, yeah.

15 Q. The second bullet point is that basically
16 that the fading of the siding that's on the buildings
17 means that that siding and what's been the storage
18 shed for the last few years are now different colors?

19 A. Yes.

20 Q. And the final bullet point: "There's not
21 enough siding to accomplish the repairs required to
22 return the property to a pre-loss condition."

23 A. Correct.

24 Q. And what is the extent of repair that would



1 be required to return the property to a pre-loss
2 condition, is that all the siding on all the
3 buildings?

4 A. No. That would be the damaged siding. So
5 we'd have to have enough pieces of the damaged siding
6 that matched, and then we'd have to have the ability
7 to not damage additional siding while we're taking off
8 that damaged one. So this piece right here in
9 section 1.1, which is a hail-damaged piece of siding,
10 that's a 16-foot piece of siding. All right. So the
11 removal of that piece of siding is going to manipulate
12 the siding above and the siding below. So it's going
13 to potentially cause damage to the one up above and
14 below, as well as the one I'm removing because I'm
15 going to remove the nails on the one I'm removing.
16 Then I'm going to have holes in the weather resistant
17 barrier that I've got to deal with. So I've got to
18 slice the weather resistant barrier. I've got to
19 slide a new weather barrier under it to plug those
20 holes and tape everything off at that siding, and then
21 I got to put a new piece of siding from this box where
22 this one was removed and hope that it matches within
23 the city requirements. We don't think it's going to.

24 Q. The amount of physically damaged siding, is



1 that the -- what you ballparked earlier as maybe 80,
2 maybe 120 pieces?

3 A. In that range, yes.

4 (Whereupon, Exhibit No. 255 was
5 marked for identification.)

6 BY MR. FORTIN:

7 Q. I'm handed you 255. And I'm just going to
8 ask you if these are the photographs from the storage
9 site that you received from counsel?

10 MS. KAPLAN: Are these -- did you pull these,
11 Matt, from the supplemental FBS file report?

12 MR. FORTIN: Yes.

13 MS. KAPLAN: Okay. Because I was going to
14 say I sent him exactly what I sent you guys.

15 MR. FORTIN: It should be -- yeah, I got it.

16 THE WITNESS: Yes.

17 (Whereupon, Exhibit No. 256 was
18 marked for identification.)

19 BY MR. FORTIN:

20 Q. And now I'm going to hand you Exhibit 256,
21 and just let me know if this is the email you
22 exchanged with Ply Gem on March 25, 2018, and
23 attachments to it that they sent you?

24 MS. KAPLAN: Was this also from the FBS



1 supplemental file?

2 MR. FORTIN: Yes.

3 THE WITNESS: Yes.

4 BY MR. FORTIN:

5 Q. And if you'll turn towards the, I guess it's
6 the second attachment to the email. It's after the
7 snazzy looking color brochure. It's numbered page 31.
8 It says Brentwood on it.

9 A. Yes.

10 Q. That first product there, the Brentwood
11 double four inch, that's what is currently up at the
12 property?

13 A. Yes.

14 Q. And the desert sand and sage, that's what is
15 currently in the storage shed?

16 A. Yes.

17 Q. And the replacement lines, the Eclipse and
18 the Mill Creek that Mastic replaced the Brentwood line
19 with, that's what's reflected in the first attachment,
20 right?

21 A. Yes.

22 Q. Or the first two attachments, I guess?

23 A. Yes.

24 Q. And just leafing through the attachment



1 there, it looks like the Mill Creek product, they have
2 double four inch, and they have desert sand color?

3 MS. KAPLAN: which page are you on? what
4 does it looks like?

5 MR. FORTIN: It looks like that.

6 MS. KAPLAN: All right.

7 MR. FORTIN: Are you both with me?

8 MS. KAPLAN: No, he's on -- you're on the
9 Eclipse, I think. I think Mill Creek is further back.
10 There you go.

11 THE WITNESS: Okay. Yes, this is what I
12 reprinted.

13 BY MR. FORTIN:

14 Q. So they have the double four inch; they have
15 the desert sand color; and it looks like this product
16 is also .04 inch thickness?

17 A. Yes.

18 Q. So the problem, at least with respect to the
19 desert sand one, is the fading of what you have
20 currently out at the site and then the wood grain,
21 right?

22 A. Grain and/or texture and color, yes.

23 Q. Right. Okay.

24 A. The only thing that I could not verify also



1 that may be an issue is they did not have a -- if you
2 take a look right here at the channel lock, the new
3 and improved channel lock, this looks different than
4 the channel lock that I saw on the site. So one of
5 the problems might be incompatibility of the channel
6 locks because this is a higher wind rated material
7 now. They may not actually lock together properly.

8 Q. For purposes of your estimate, based on what
9 you testified to earlier, it's my understanding that
10 the only line item that you would potentially put in
11 an ordinance or law bucket is installing a weather
12 resistant barrier on buildings where there currently
13 is none; is that accurate?

14 A. Yes.

15 Q. Can you tell me what the scope of work would
16 be for the siding due to matching that you put in
17 matching bucket?

18 MS. KAPLAN: Are you talking about just
19 identifying a line item as opposed to cost?

20 MR. FORTIN: Whatever is easier for him to
21 do.

22 MS. KAPLAN: Well, I'm asking before I made
23 an objection. I guess I'll make an objection then to
24 the form of the question, vague.



1 BY MR. FORTIN:

2 Q. Are there any line items in the estimate for
3 parts of line items, for instance, just not an entire
4 quantity that you would put in a matching bucket?

5 A. Well, no, I would put it in the commercial
6 unavailability. It's not a manufactured product
7 anymore. So I'm taking off the siding. I believe
8 we'll be able to demonstrate to the jury the damage
9 that will occur as a result of the roofing. I believe
10 we'll be able to reasonably quantify for them the
11 damages as a result of hail. I believe we'll be able
12 to quantify for them that the product's no longer
13 commercially available.

14 In looking now on what you put in front of me
15 at the channel lock right in here and looking at the
16 channel lock on the existing product, they're
17 completely different. So there's no way that I'm
18 going to be able to take this product and interweave
19 it for repair into what's there. We have a style
20 difference. So those reasons alone, I believe, are
21 going to get me all of the siding, and they have
22 nothing to do with code. Where code would come into
23 play is, in fact, this could be utilized to replace
24 this piece and it didn't match color-wise and the



1 Building Code official said I'm not going to let you
2 do that to the town home association, I'm going to
3 make you replace it all, then I would argue that that
4 probably is a code-related issue. I don't think
5 that's the argument. The argument is, we don't have
6 the product to replace the physical damage, and the
7 undamaged pieces that will become damaged when they're
8 removed, and I don't have a product that I can match
9 together, because they changed the design. It sucks,
10 but I really think that's the issue. So I would put
11 zero. That's what I would argue.

12 MR. FORTIN: Let's go off the record.

13 (Whereupon, a short break
14 was taken, after which the
15 following proceedings were
16 had:)

17 (Whereupon, Exhibit No. 257 was
18 marked for identification.)

19 MR. FORTIN: I'm going to hand you
20 Exhibit 257.

21 THE WITNESS: Yes.

22 MR. FORTIN: And, Emilie, you'll recognize
23 that from Mr. Peterson's deposition. I'm just marking
24 it anew because Mr. Peterson wrote on the exhibit.



1 BY MR. FORTIN:

2 Q. My question for you, Mr. Irmiter, is, do you
3 see any mismatched siding on the first page of
4 Exhibit 257?

5 MS. KAPLAN: I'm just going to object to the
6 foundation for these photographs. And in particular,
7 I think without a complete view, it takes the image
8 out of context, and there's various factors, including
9 lighting and the type of camera that was used to take
10 those photographs, that could affect the way it's
11 depicted.

12 MR. FORTIN: Good answer, Emilie.

13 THE WITNESS: Yes. Would you like me to mark
14 the mismatches or how do you want to do that?

15 BY MR. FORTIN:

16 Q. Do you need to mark particular areas on the
17 first page or can you just say this side is different
18 than that side?

19 A. Well, this side is different than that side.

20 Q. Can you say it in a way that would be
21 intelligible on the record?

22 A. On page 1, the right-hand side is different
23 than the left-hand side at the interlock. Either the
24 right-hand piece is larger or the left-hand piece is



1 smaller. I would hazard to say that the reason this
2 is occurring, if, in fact, the panels are identical in
3 size, is exactly what I talked about earlier is that
4 channel interlocks are different, and that's causing
5 this alignment issue.

6 The concern that I would have with this, and
7 I see this around the country, is that the channel
8 lock that is on the new siding is specifically tested
9 and designed to meet the new code requirements that
10 took effect for components in cladding and vinyl
11 siding starting in 2000. So it's a more robust
12 channel lock, but it also seats the siding a little
13 bit differently. We learned this in our vinyl siding
14 class. So there is an alignment issue, and what you
15 generally find that happens is that this -- the piece
16 that is the newer piece, that is the more robust piece
17 will actually dislodge because it doesn't interlock
18 correctly at far below the designated wind load speed
19 of 165 miles an hour. You now have a siding that
20 isn't performing the way it was designed because it's
21 installed incorrectly.

22 Page 2, again, they're stepping back from
23 this. Just based on this particular picture, it looks
24 to me like I have a different color going on. The



1 color on the left is more robust. The color on the
2 right looks more faded. And, again, I have an
3 alignment issue that's occurring here.

4 And then on the last picture, it looks to me
5 like I have two pieces that have been put in that are
6 different.

7 Based on my discussions with the Building
8 Code official, these two pieces of siding or the
9 remaining siding around it, one or the other would be
10 rejected by the city if they were to look at these.

11 Q. why?

12 A. Because of the mismatching. If
13 hypothetically Exhibit 257 was in the city of
14 Streamwood. I have no idea where these were taken.

15 Q. Has a court ever barred you from providing
16 expert testimony on the ground that you were not
17 qualified?

18 A. Yes.

19 Q. Do you recall if it's more than one court?

20 A. There is --

21 Q. Let me actually rephrase that. Do you recall
22 if that has happened in more than one case?

23 A. There are two cases that I'm aware of. One
24 was an interlocutory decision that was done down in



1 Red Wing, Minnesota, some years ago. Hopperstad I
2 think is what it was. It's not published. And then
3 as a result of that ruling, which, by the way, I heard
4 from -- this happened at 10 o'clock in the morning on
5 a Wednesday or Thursday. I heard from seven different
6 law firms around the country by 3 o'clock that
7 afternoon that we worked with who had heard about
8 this. So clearly that was a big day for the insurance
9 companies when that happened. That occurred.

10 Interesting when you do the background check
11 on that particular judge and the number of sanctions
12 that he had thrown against him before this ruling.
13 Must have had a axe to grind or something like that.

14 The second case was the Morrissey case. In
15 that particular case, I was being asked to testify on
16 the duties and responsibilities of a licensed
17 contractor on a fraudulent concealment case, and I was
18 at the hearing. The judge -- I was able to hear the
19 judge's ruling on that, and then read it later. But
20 the judge basically said Mr. Irmiter is certainly
21 qualified to testify on a variety of subjects related
22 to construction and on the defects on this case, but
23 we're not going to let him testify to the duties of
24 disclosure that the contractor had because he's not



1 licensed as a contractor. That had to do with the
2 revocation of my license that had happened the year
3 before. Awkward position I was put in by the
4 attorneys in that case.

5 To answer that, in 2006 then I became
6 licensed as a Building Code official interestingly
7 enough from the same department that revoked my
8 license, from the same individual that revoked my
9 license, Mr. Charlie Durenberger, who I have on my
10 speed dial. Mr. Durenberger clearly recognized that I
11 had rehabilitated myself. I was allowed to sit for
12 the exam and take the class to become licensed. I've
13 maintained that license since then with continuing
14 education requirements. And sorry to have that tough
15 time behind me, but it was a difficult time for about
16 a year and a half.

17 Q. Are those the only two cases you're aware of
18 where a court has found you not qualified to provide
19 expert testimony?

20 A. Well, that I was actually involved in. I can
21 name two others that I found out in depositions about
22 after the fact.

23 Q. Can you tell me about those, please?

24 A. Sure. One of them is down in Oklahoma, and



1 it's a case where the attorneys out of Texas never
2 showed up for the hearing. The judge ruled that
3 because I hadn't been to the site, he was going to
4 throw out my report. I have pictures showing me on
5 the site. I'd never been told about the hearing. So
6 I disregard that as being bad law. That attorney's
7 not practicing anymore. There have been motions in
8 limine filed on that one, and we've passed them every
9 single time. They don't even bother doing that
10 anymore.

11 And then there's recently one that I'm sure
12 you're aware of on a church here. I heard about it a
13 year ago. A church that I -- here in Chicago,
14 downtown Chicago that I looked at for the Voss Law
15 Firm down in Texas. And, again, I was unaware that
16 Voss had -- that there was a motion or even a question
17 about any of the work that I had done on that. I
18 never had a chance to know that the motion had been
19 filed and never had to chance to answer it with an
20 affidavit. The judge made two particular rulings.
21 One, he indicated that I was not qualified to testify
22 on weather because there was nothing on my CV that
23 indicated I had any weather training. Yet, on the
24 very first page it says I'm a Metro Skywarn NOAA



1 weather spotter. What they did is, they picked out
2 of -- in their affidavit, they picked out of my resume
3 that I was a Building Code official. They said,
4 what's a Building Code official talking about weather
5 for? Had I been able to answer that in an affidavit,
6 the judge might have ruled differently.

7 Secondly, as you know, experts are allowed to
8 rely on firsthand information that they're given, and
9 that's part of our process, interviewing people. So I
10 went down to look at the church, and the very first
11 question I asked the pastor is, tell me what's
12 happening here in the corner of this entryway, and he
13 said, that's old damage, that's not related today
14 this. I said, great. That's what we're -- we're
15 going to cover this. So I detailed old and new damage
16 and damage that had occurred before but got worse to
17 bifurcate out to give my opinion about what had
18 occurred with the ice damming. Come to find out that
19 the gentleman who toured me wasn't even a member of
20 the church at the time. So I guess the lesson there
21 is, you can't trust a minister.

22 I don't mean to make light of it. But I
23 don't really treat those other two cases as having
24 much weight when they're explained in an affidavit.



1 Q. Do you recall the name of the Oklahoma case?

2 A. I do not.

3 Q. Is it listed in your CV?

4 A. It's six years ago. It's old. I will tell
5 you that every motion in limine that has been filed
6 since then, and the very first one was led by the form
7 firm that you were a part of, has been overturned, and
8 I've been allowed to testify. I've actually been
9 qualified as both a causation and a damages expert by
10 a number of courts.

11 (Whereupon, Exhibit No. 258 was
12 marked for identification.)

13 BY MR. FORTIN:

14 Q. I'm handing you Exhibit 258. Please let me
15 know if that is the order in the Hopperstad case that
16 you referred to a moment ago.

17 A. Yes. And I think the important part of that,
18 and this is actually what led me to begin
19 rehabilitation, was item No. 3, where the main
20 focus -- I was at this hearing, as well. And the main
21 focus of his arguments in court, which are really
22 condensed to one line, is he was really having an
23 issue with the fact that -- he wrote the Court fails
24 to see evidence that he has made any substantial



1 changes in that position, in my position to work as an
2 expert or a qualifying expert. And so the
3 rehabilitation began as soon as he put that statement
4 out there, and obviously I've rehabilitated myself.

5 Q. You were formerly a residential building
6 contractor the state of Minnesota, correct?

7 A. Yes. Our firm went through an acquisition of
8 another company, and within six months, it went
9 through federal bankruptcy and lost everything.

10 Q. And that contractor's license was revoked by
11 a consent order you entered into with the Commissioner
12 of Commerce dated April 5, 2001; is that correct?

13 A. Yes, absolutely.

14 If you read the consent order, though, it's
15 not the first consent order they sent me. The initial
16 draft wanted me to admit to all of the, quote,
17 allegations that had been put forth. I would not do
18 that. The final consent order in exchange for giving
19 me back my license was that I did not agree to any of
20 the charges or that any of them were valid.

21 Q. Do you still have a copy of the consent
22 order?

23 A. Oh, yeah. Sure I do.

24 Q. Am I correct that the commissioner had



1 commenced a formal administrative action against
2 Irmiter Contractors and Builders?

3 A. Yes. And what your firm Childress Duffy
4 argued in front of a district court in Minneapolis
5 where this was finally dealt with and where motions in
6 limine started to go -- turn the other direction is,
7 they argued that it would only be proper to have the
8 state here to have Mr. Irmiter question them on those
9 items if you're going to rule on behalf of the state.
10 You can't do that. And basically the judge agreed
11 that in order for any of this to proceed forward, you
12 would have to have me have the ability to
13 cross-examine the state. All those charges have been
14 dropped. They're all old. They're all done. The
15 bankruptcy wiped out all of the trailing liability.
16 Done deal as far as the judge is concerned.

17 Q. Was the formal administrative action by the
18 Commissioner directed against you personally, as well
19 as Irmiter Contractors and Builders?

20 A. My understanding was Irmiter Contractors and
21 Builders, yeah, the corporation.

22 Q. You were the individual that held the actual
23 contractor's license?

24 A. Yes. In the state of Minnesota, you have



1 to -- you have one individual in the company who holds
2 that license. It could have been one of my
3 carpenters. It could be anybody basically. I
4 happened to hold the license.

5 Q. In the administrative action by the
6 Commissioner, am I correct that its allegations -- or
7 the Commissioner's allegations included that you had
8 engaged in fraudulent, deceptive, or dishonest
9 practices?

10 A. Oh, yeah.

11 Q. Those are the allegations?

12 A. Absolutely. Those were the allegations.
13 There was never an administrative hearing. This was
14 simply a filing. The hearing was suspended as soon as
15 I agreed to give them back my license.

16 Q. At some point, you submitted an affidavit in
17 family court, correct?

18 A. I did. Are you familiar with what is called
19 a Karon's agreement?

20 Enlighten you. A Karon's agreement was put
21 in place at my divorce. The Karon's agreement gave my
22 ex-wife consideration, meaning money and property.
23 And for that consideration, I was given the company
24 business. As part of the Karon's agreement, I agreed



1 to have the company remodel her kitchen in our former
2 house. The Karon's agreement was put in place to
3 protect me against upside. So in other words, if I
4 take the business from a certain dollar volume, three
5 years later it's doing 10 times that amount, she can't
6 come back and ask for contribution because of that
7 increase in the business. So basically it's a line in
8 the sand that says, we're parting ways, you have
9 nothing to do with my business, but I'm going to give
10 you something for it. However, the Karon's agreement
11 does not contemplate downside.

12 So when I went bankrupt, her kitchen didn't
13 get done. She was pissed. So she sued me. And so
14 the attorney that I hired basically -- because one of
15 her arguments was, he can go back and start working as
16 an expert, make all this money working as an expert.
17 I was unemployed when this was put forth. And
18 basically I said, no, I can't. And the attorney put
19 in their language that said I was persona non grata
20 for the foreseeable future. Clearly that foreseeable
21 future ended within about a year and a half because I
22 was out testifying again and back paying her full
23 child support and everything else.

24 Q. That statement you just referred to, that was



1 in the affidavit that you signed, and that was
2 submitted to the family court, right?

3 A. Yeah. So it's a family court matter. It did
4 not mean that I had forgotten all the things I had
5 learned. I just needed to rehabilitate.

6 (Whereupon, Exhibit No. 259 was
7 marked for identification.)

8 BY MR. FORTIN:

9 Q. I'm handing you Exhibit 259. Just let me
10 know if this is an affidavit that you signed on
11 August 28, 2006, for submission in a case in Hennepin
12 County, Minnesota, known as Kathy and Jeff Link versus
13 Mark Johnson Construction, Inc.?

14 A. Yes.

15 Q. And are your statements in this affidavit
16 true?

17 A. Yes. The judge also allowed me to testify in
18 that case after this affidavit.

19 Q. You provided an additional affidavit in that
20 case, right?

21 A. I don't know. Maybe.

22 (Whereupon, Exhibit No. 260 was
23 marked for identification.)
24



1 BY MR. FORTIN:

2 Q. Exhibit 260. Let me know if that is an
3 affidavit that you submitted in the Link versus Mark
4 Johnson Construction case on August 31, 2006.

5 A. Yes.

6 MS. KAPLAN: I'm sorry. Could you read back
7 the question?

8 (Whereupon, the record
9 was read as requested.)

10 THE WITNESS: Yeah. This is where I actually
11 answered some of the -- not all of them, but some of
12 the complaints by the -- the allegations by the state,
13 the ridiculous allegations. Yes, it is my affidavit.

14 BY MR. FORTIN:

15 Q. And are the contents of this affidavit true?

16 A. Oh, absolutely.

17 Q. If you'll turn to page 23 of it.

18 A. Yes.

19 Q. There's a heading that says "Fraud Claims of
20 the Commerce Department."

21 A. Yes, it does.

22 Q. Were the counts directed against you and --
23 let me try that again.

24 Did the Commissioner's complaint against the



1 company include a count alleging fraud?

2 A. Yes.

3 Q. And below that heading after paragraph 26 on
4 page 23, there's an italicized heading that says "The
5 Johnson Complaint?"

6 A. Yes.

7 Q. And then turning the page, "The Doty/Tobo
8 Complaint?"

9 A. Yes.

10 Q. And then "The Johnson Forgery Allegation" on
11 page 26?

12 A. Yes. which, by the way, I would add that we
13 counter-sued them in bankruptcy court on that forgery
14 allegation, and they quickly withdrew that forgery
15 allegation as being false. Hence, the problem with
16 administrative actions put forth by states in kangaroo
17 courts, as we like to call them.

18 Q. The Keye complaint on page 27, are those
19 complaints and allegations I just identified, were
20 those basically the basis for the Commissioner's
21 complaint?

22 A. That, and there were some subcontractors and
23 vendors that didn't get paid, which happens in a
24 bankruptcy. There were projects that did not get



1 completed, which happens in a bankruptcy. And there
2 were employees that didn't get their last paychecks.
3 Some of those were in there as well. I think the
4 focus here was really on the four major consumer
5 issues that were raised in that complaint that we
6 thought would be problematic potentially and just not
7 true, so that's why we answered them.

8 (Whereupon, Exhibit No. 262 was
9 marked for identification.)

10 BY MR. FORTIN:

11 Q. I skipped a number. I'll go back to it with
12 my last exhibit. But here is Exhibit 262.

13 MS. KAPLAN: Wait. Did I miss one?

14 MR. FORTIN: No. I misnumbered. So the one
15 that's going to be last will be Exhibit 261.

16 MS. KAPLAN: Okay.

17 BY MR. FORTIN:

18 Q. What I've handed you is Exhibit 262,
19 Mr. Irmiter. Let me know if that's the order in the
20 Morrissey versus Gurtek Custom Builders and Zimmerman
21 Stucco and Plaster case in Ramsey County, Minnesota.
22 That was the second instance where you said you were
23 barred from testifying as an expert?

24 A. Yes, this is it. There's his order.



1 what's interesting is this order doesn't say
2 is that the expert on the other side, Jeff Jillson,
3 who is a registered and licensed engineer in the state
4 of Minnesota, was also barred from testimony. General
5 thinking is this judge did not want to hear this case
6 and got rid of his experts pretty quickly. But it is
7 what it is, and I have rehabilitated myself since
8 then.

9 Q. If you'll turn to page 3, the second
10 paragraph that starts out "It is also been suggested."
11 Do you see that?

12 A. No, I do not.

13 Q. It's the first full paragraph. No, the next
14 page.

15 A. Yes.

16 Q. There's a reference in the middle of that
17 paragraph to representations to this court currently
18 with regard to his having testified as an expert in
19 Hennepin County in 2007. Do you see that?

20 A. Yes.

21 Q. What is that referring to? What
22 representations had you made to --

23 A. That I testified in district court, and I
24 did. There's a record of it. He just didn't get it.



1 Q. what case was that in?

2 A. It's not on my CV anymore. I can't remember.
3 But I mean, I testified. I was sworn in. I
4 testified.

5 Q. Do you remember a case entitled "Creekwood
6 Rental Townhomes, LLC, and Richard Lewandowski versus
7 Kiln Underwriting Limited?

8 A. Yes, absolutely.

9 Q. Do you recall doing a deposition in that
10 case?

11 A. Which part of the case? There were a couple
12 of different cases. There was a first-party and
13 third-party construction defect case.

14 Q. This was the first party.

15 A. I must have if you have it.

16 (Whereupon, Exhibit No. 261 was
17 marked for identification.)

18 BY MR. FORTIN:

19 Q. I've just handed you a copy of what I believe
20 to be the transcript of that deposition, and
21 ironically you'll notice on page 2 that I appeared at
22 the deposition on behalf of the plaintiffs.

23 A. Yes, because Childress Duffy was representing
24 Mr. Lewandowski at the time.



1 Q. Yes. Do you recall this deposition in any
2 way, shape, or form?

3 A. No, I really don't. I don't know if this is
4 a result of the appraisal action and the appraisal
5 award that didn't get paid or if this is result of
6 the -- because there were -- there was a water
7 intrusion issue related to stucco. That was the
8 third-party construction defect case. There was a
9 first-party element to that that was brought forth
10 with Childress. There was a third loss, which was a
11 hail damage claim that occurred during all of this to
12 the roofing and to windows where I appeared at the --
13 and testified at the appraisal hearing, I believe.
14 I'm not sure which of those first-party matters this
15 is for. But I'm guessing it's for the hail damage
16 claim probably.

17 Q. Yes, I believe it is.

18 A. Yeah, I think it is, because that other one
19 settled. In fact, the other one settled, and then the
20 insurance company retained me on the subrogation claim
21 as their expert.

22 MR. FORTIN: Go off the record for a moment.

23 (Whereupon, a discussion
24 was had off the record.)



1 BY MR. FORTIN:

2 Q. Mr. Irmiter, if you would turn to page 145,
3 the transcript from -- or I'm sorry, the transcript
4 that we've marked as Exhibit 261, the page which you
5 helpfully pointed me to. Starting at line 13, there
6 is a question asked of you regarding a statement in
7 the affidavit you submitted to the family court.

8 A. Yes.

9 Q. And there's a portion of that question that
10 purports to quote from your affidavit, and I believe
11 that portion reads: "I am obviously no longer
12 credible as an expert and will not be hired in that
13 capacity for the foreseeable future." To the best of
14 your recollection, is that an accurate recitation of a
15 particular statement in that affidavit?

16 A. Yes.

17 MR. FORTIN: Those are all the questions I
18 have for you today, Tom.

19 THE WITNESS: Thank you.

20 MS. KAPLAN: I just have a couple cleanup,
21 but I need a quick minute.

22 MR. FORTIN: Sure.

23 (Whereupon, a short break
24 was taken, after which the



1 following proceedings were
2 had:)

3 CROSS-EXAMINATION

4 BY MS. KAPLAN:

5 Q. Mr. Irmiter, I just have a few questions for
6 you with regard to the family court affidavit that was
7 the subject of the preceding questions by Mr. Fortin.

8 At the time that you authored that affidavit,
9 were you in the business of offering expert or
10 consulting services in the field of hail or wind
11 damage assessment to real property?

12 A. No.

13 Q. When did you begin offering expert consulting
14 services in the field of hail and wind damage
15 assessment professionally?

16 A. Professionally, 2007 as I testified earlier
17 today.

18 Q. And that was after the affidavits that you
19 were shown previously from the Link case; is that
20 right?

21 A. Yes.

22 Q. And with regard to any of the cases of which
23 you're aware and which you've been prevented for any
24 reason from offering expert testimony, did any of



1 those cases involve your providing opinions in the
2 field of hail and wind damage assessment?

3 A. Yes, the majority of them in the last
4 10 years.

5 Q. I think you misunderstood my question.

6 A. I'm sorry.

7 Q. Let me ask it again. Is that okay, Matt?
8 I'm not going to draw an objection?

9 In any of the cases in which you've been
10 prevented from offering expert testimony --

11 A. Oh, sorry. I thought you said presented.

12 Q. Prevented.

13 A. Okay.

14 Q. Did any of those cases involve you offering
15 expert testimony or consulting services in the field
16 of hail or wind damage assessment?

17 A. No, I have not been prevented from testifying
18 on wind or hail. I have also not been prevented from
19 testifying on code. And I have also not been
20 prevented from testifying on causation and damages,
21 meaning the estimate part of these kinds of things.

22 Q. And since the family court matter and the
23 Link matter and the other cases in which you may have
24 been prevented from offering expert testimony, have



1 you also been qualified or allowed to testify in an
2 expert capacity by courts of other jurisdictions?

3 A. Yes, federal courts and district courts.

4 Q. Earlier in your deposition, there was
5 discussion about the April 6, 2017, storm. Do you
6 recall discussing that storm?

7 A. I do, yes.

8 Q. And there was reference to the size of the
9 hail stones as -- well, pulled from the SWDI tool, and
10 I believe the reference was 2.5 to 2.75. Does that
11 ring a bell?

12 A. That is correct, yes.

13 Q. Other than those size factors that were
14 available through the SWDI tool, were there other
15 factors which allowed you to eliminate that particular
16 storm from having caused the damage that you observed
17 at the Forest Ridge property?

18 A. Yes.

19 Q. What factors were those?

20 A. The onsite visit, the ground truth
21 investigation. If all of our work involved simply
22 getting an assignment that somebody said was related
23 to hail, going onto the internet and pulling up the
24 SWDIs from NOAA and issuing reports, that would be



1 really, really easy. But we have to have the physical
2 ground truth to complete that assignment.

3 Q. And what about the physical ground truth
4 investigation allowed you to eliminate that storm in
5 conjunction with the data from the SWDI tool?

6 A. There was no sign of physical damage to the
7 site of hail of that size or proportion anywhere on
8 the site, which led me -- us to conclude that either
9 all of the roofs had been replaced after a 2010 event
10 and the siding replaced or, in fact, this site had
11 actually missed the hail from that event.

12 Q. Was there anything other than the size of the
13 hail impact marks that you observed at Forest Ridge
14 that allowed you to eliminate the April 6, 2010, storm
15 from having caused that damage?

16 A. Yes, the way that they presented themselves
17 in terms of weathering. All of the hail, except for
18 two other three that I indicated earlier in my
19 deposition, on the roofing all was consistent with
20 newer hail, consistent with 2015.

21 Q. At various points in your deposition today
22 the term "matching" has been used with respect to the
23 analysis of replacement or repair of siding at
24 Forest Ridge. Do you recall being asked and talking



1 about matching at various points today?

2 A. Yes.

3 Q. Am I correct that one of the components of
4 this matching issue is the color of the siding, right?

5 A. Yes.

6 Q. Are there other components to the matching
7 issue?

8 A. Yes.

9 Q. What are those components?

10 A. Well, size, texture, and the actual design of
11 the product for its compliance with building codes in
12 relationship to wind load requirements.

13 One of the things that happened when the
14 family of building codes, International Building Codes
15 became the standard in 2000 for all of the states is
16 the engineering community lobbied very, very hard
17 starting in 1997, '98, when they knew this was coming,
18 to insert into that special provisions for components
19 in cladding. In other words, they don't want things
20 blowing off the buildings and killing people. So as a
21 result of very robust wind testing of various products
22 that the manufacturers began doing in the mid-'90s,
23 this entered into the building codes. And so we saw
24 dramatic changes in how the products were



1 manufactured, how they integrate with each other. And
2 the codes are very specific about incompatibility of
3 materials.

4 The easiest way to explain that to a jury is
5 that sitting here on the table, we have at least --
6 and in my briefcase here, we probably have two
7 different pens. I could take the insides out of one
8 pen and the insides out of the other pen, and I could
9 jam them into each other. And I could screw them
10 together, and I could maybe duct tape them. And
11 they'll work for a while, but they're not going to
12 work the way they were designed as a system. The
13 siding is looked at as a system, and therefore it has
14 to integrate correctly.

15 Q. Pulling out what was previously marked as
16 Exhibit 256, which I believe you identified as the
17 materials that were forwarded to you from the customer
18 service representative at Ply Gem. Was there
19 information in the materials that you were provided
20 about the products that are currently on the market
21 similar to the siding at Forest Ridge that caused you
22 to have concern about the ability to match using those
23 products other than color?

24 A. Yes.



1 Q. what factors or issues are those?

2 A. Well, Mastic has published on this document
3 for the Mill Creek siding, which is the compatible
4 siding for this site. They have their new proprietary
5 design and engineering delivers a panel that achieves
6 superior wind resistance, and it's rated up to
7 165 miles an hour. And they go through their new
8 double hem-lock system. And one of the things that
9 became evident on this site when you walk around, and
10 we took pictures of this, there's pieces of siding on
11 various elevations, particularly higher up, that are
12 open, that are flapping. This system is designed to
13 stop that from happening.

14 And so this particular channel lock that is
15 in the new siding is not compatible with what's on the
16 building. So interspacing this particular piece of
17 siding with something there won't work.

18 Q. Anything else besides the channel locking
19 system?

20 A. The texture and grain is different as well.

21 Q. Do you have -- do you know if the new Mill
22 Creek siding is rated or -- rated the same as the
23 siding that's currently at Forest Ridge as far as wind
24 speeds it would withstand?



1 A. Based on my training through the Vinyl Siding
2 Institute, sidings prior to 2000 were not wind rated.
3 The Building Code addressed it in the following
4 manner. It said that you were not allowed to install
5 vinyl siding higher than 80 feet off the ground. That
6 was the only thing that it said. And the reason for
7 that is, because the higher wind speeds it would blow
8 up, so they had a height limitation. That has now
9 progressed where you could take this new siding and
10 you could install it at higher elevations because of
11 the way it's designed. So there was no language on
12 that. So we don't have a wind rating on that siding.

13 MS. KAPLAN: Those are all my questions.

14 Thank you.

15 MR. FORTIN: Reserve signature?

16 MS. KAPLAN: Yes.

17 THE WITNESS: Yes, please.

18 (witness excused at 4:46 p.m.)
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FOREST RIDGE HOMEOWNERS
ASSOCIATION,

Plaintiff,

-vs-

GREATER NEW YORK MUTUAL
INSURANCE COMPANY,

Defendant.

Case No. 1:17-CV-4193

I, THOMAS IRMITER, being first duly sworn,
on oath, say that I am the deponent in the aforesaid
deposition, that I have read the foregoing transcript
of my deposition taken 17th day of May, 2018,
consisting of Pages 1 through 250 inclusive, taken at
the aforesaid time and place and that the foregoing is
a true and correct transcript of my testimony so
given.

_____ Corrections have been submitted
_____ No corrections have been
submitted

THOMAS IRMITER, Deponent

SUBSCRIBED AND SWORN TO
before me this _____ day
of _____ A.D., 2018.

Notary Public



1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS:
3

4 I, Judith T. Lepore, Certified Shorthand
5 Reporter in the State of Illinois, do hereby certify
6 that on the 17th of May, A.D., 2018, the deposition of
7 the witness, THOMAS IRMITER, called by the Defendant,
8 was taken before me, reported stenographically and was
9 thereafter reduced to typewriting through
10 computer-aided transcription.

11 The said witness, THOMAS IRMITER, was first
12 duly sworn to tell the truth, the whole truth, and
13 nothing but the truth, and was then examined upon oral
14 interrogatories.

15 I further certify that the foregoing is a
16 true, accurate and complete record of the questions
17 asked of and answers made by the said witness, at the
18 time and place hereinabove referred to.

19 The signature of the witness was not waived
20 by agreement.

21 Pursuant to Rule 30(e) of the Federal Rules
22 of Civil Procedure for the United States District
23 Courts, if deponent fails to read and sign this
24 deposition transcript within 30 days or make other



1 arrangements for reading and signing thereof, this
2 deposition transcript may be used as fully as though
3 signed, and the instant certificate will then evidence
4 such failure to read and sign this deposition
5 transcript as the reason for signature being waived.

6 The undersigned is not interested in the
7 within case, nor of kin or counsel to any of the
8 parties.

9 IN TESTIMONY WHEREOF: I have hereunto set my
10 verified digital signature this 24th of May 2018.

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Judith T. Lepore, CSR

License No. 084-004040



McCorkle Litigation Services, Inc.
200 N. LaSalle Street, Suite 2900
Chicago, Illinois 60601-1014

May 24, 2018

MS. EMILIE KAPLAN
THOMPSON, BRODY & KAPLAN, LLP
161 North Clark Street
Suite 3575
Chicago, Illinois 60601

IN RE: Forest Ridge v Greater New York Mutual
COURT NUMBER: 17 CV 4193
DATE TAKEN: 5/17/18
DEPONENT: Thomas Irmiter

Dear Ms. Kaplan:

Enclosed is the deposition transcript for the
aforementioned deponent in the above-entitled cause.
Also enclosed are additional signature pages, if
applicable, and errata sheets. Per your agreement to
secure signature, please submit the transcript to the
deponent for review and signature. All changes or
corrections must be made on the errata sheets, not on
the transcript itself. All errata sheets should be
signed and all signature pages need to be signed and
notarized.

After the deponent has completed the above, please
return all signature pages and errata sheets to me at
the above address, and I will handle distribution to
the respective parties. If you have any questions,
please call me at the phone number below.

Sincerely,	Judith Lepore
Cindy Alicea	Court Reporter
Signature Department	(312) 263-0052

cc: M. Fortin

